



# The Intermediate Sanctions Handbook:

---

## Experiences and Tools for Policymakers

---

National Institute of Corrections

Larry Solomon, *Deputy Director*

George Keiser, *Chief  
Community Corrections Division*

Phyllis Modley, *Project Manager*

State Justice Institute

David I. Tevelin, *Executive Director*

Kathy Schwartz, *Deputy Chief  
Program Division*

---

# The Intermediate Sanctions Handbook: Experiences and Tools for Policymakers

---

*edited by Peggy McGarry and Madeline M. Carter, Senior Associates  
Center for Effective Public Policy, Washington, D.C.  
October 1993*

---

*This document was prepared under grant number  
92CO5GHQ6 from the National Institute of  
Corrections, U.S. Department of Justice. Support  
for the grant was provided jointly by NIC and the  
State Justice Institute.*

*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  
U.S. Department of Justice or the State Justice  
Institute.*

*Copyright © 1993*

*The National Institute of Corrections and the  
State Justice Institute reserve the right to repro-  
duce, publish, translate, or otherwise use, and  
to authorize others to publish and use all or any  
part of the copyrighted materials contained in  
this publication.*

*State Justice Institute  
Board of Directors*

*National Institute of Corrections  
Advisory Board*

**Chairman**  
**Malcolm M. Lucas**  
*Supreme Court of California  
San Francisco, California*

**Vice Chairman**  
**John F. Daffron, Jr.**  
*Judge  
Twelfth Judicial Circuit  
Chesterfield, Virginia*

**Secretary**  
**Janice Gradwohl**  
*Judge  
Lincoln, Nebraska*

**Executive Committee Member**  
**Terrence B. Adamson**  
*Donovan Leisure, Rogovin,  
Huge & Schiller  
Washington, D.C.*

**Carl F. Bianchi**  
*Administrative Director of the Courts  
Boise, Idaho*

**David A. Brock**  
*Chief Justice  
Supreme Court of New Hampshire  
Concord, New Hampshire*

**James Duke Cameron**  
*Bonnett, Fairbourne & Friedman  
Phoenix, Arizona*

**Vivi L. Dilweg**  
*Judge  
Eighth Judicial Circuit  
Green Bay, Wisconsin*

**Carlos R. Garza**  
*Administrative Judge (Ret.)  
Vienna, Virginia*

**Keith McNamara**  
*McNamara & McNamara  
Columbus, Ohio*

**Sandra A. O'Connor**  
*States Attorney of Baltimore County  
Towson, Maryland*

**Smiley Ashton**  
*Acting Assistant Attorney General  
Office of Justice Programs  
Washington, D.C.*

**Assistant Secretary for Children  
& Families**  
*Department of Health & Human Services  
Washington, D.C.*

**Norman A. Carlson**  
*Senior Fellow  
University of Minnesota  
Stillwater, Minnesota*

**John E. Clark**  
*Attorney-at-Law  
San Antonio, Texas*

**Lynne DeLano**  
*Secretary  
South Dakota Department of Corrections  
Pierre, South Dakota*

**Newman Flanagan**  
*Executive Director  
National District Attorneys Association  
Alexandria, Virginia*

**Kathleen Hawk**  
*Director  
Federal Bureau of Prisons  
Washington, D.C.*

**Susan Humphrey-Barnett**  
*Anchorage, Alaska*

**Norval Morris**  
*Professor  
University of Chicago Law School  
Chicago, Illinois*

**Barry J. Nidorf**  
*Chief Probation Officer  
Los Angeles Probation Department  
Downey, California*

**Don Omodt**  
*Sheriff  
Hennepin County  
Minneapolis, Minnesota*

**John A. Prescott**  
*Chief, Retired  
Kennebunkport Police Department  
Cape Porpoise, Maine*

**Edward F. Reilly, Jr.**  
*Acting Chairman  
U.S. Parole Commission  
Bethesda, Maryland*

**Judge William W Schwarzer**  
*Director  
Federal Judicial Center  
Washington, D.C.*

**Paul V. Voinovich**  
*Criminal Justice Planner  
Voinovich Companies  
Cleveland, Ohio*

**John Wilson**  
*Acting Administrator  
Office of Juvenile Justice  
& Delinquency Prevention  
Washington, D.C.*

---

*Intermediate Sanctions Project*  
*Advisory Board*

---

**Ginger Roberts Berrigan**  
*Gravel Brady & Berrigan*  
*New Orleans, Louisiana*

**Donald Cochran**  
*Commissioner of Probation*  
*Commonwealth of Massachusetts*

**George Gish**  
*Trial Court Administrator*  
*Detroit Recorders Court, Michigan*

**Judith Greene**  
*Vera Institute of Justice*  
*New York, New York*

**M. Kay Harris**  
*Associate Professor*  
*Criminal Justice Department*  
*Temple University*  
*Philadelphia, Pennsylvania*

**Don Hogner**  
*Chief Probation Officer (retired)*  
*Alameda County Probation Department*  
*Oakland, California*

**The Honorable Betty Lester**  
*Essex County Superior Court Judge*  
*Newark, New Jersey*

**Albert Reiderer**  
*Jackson County Prosecuting*  
*Attorney (former)*  
*Kansas City, Missouri*

---

## Table of Contents

---

<i>List of Exhibits</i> .....	vi
<i>List of Exercises</i> .....	vii
<i>List of Figures</i> .....	viii
<i>List of Discussion Outlines</i> .....	ix
<i>Foreword</i> .....	x
<i>Acknowledgments</i> .....	xii
1. The Intermediate Sanctions Project: The Context of This Handbook <i>Peggy McGarry</i> .....	
<i>Intermediate Sanctions:</i> A View from the Judiciary <i>The Honorable Roger K. Warren</i> ..	3
<i>Intermediate Sanctions:</i> A View from the Prosecution <i>Stephanie Tubbs-Jones</i> .....	4
<i>Intermediate Sanctions:</i> A View from Corrections <i>Arthur Wallenstein</i> .....	5
<i>Intermediate Sanctions:</i> A View from the Defense <i>Andrew S. Liskov</i> .....	6
<i>Intermediate Sanctions:</i> A View from Probation <i>Norman Helber</i> .....	7
2. Making This Handbook Work for You <i>Peggy McGarry</i> .....	
9	
3. The Intermediate Sanctions Process: Rethinking Your Criminal Justice System <i>Peggy McGarry</i> .....	
11	
4. Essential Ingredients for Success <i>Peggy McGarry</i> .....	
21	
5. Establishing and Maintaining the Policy Team <i>Bill Woodward</i> .....	
27	
6. Defining a Continuum of Sanctions: Some Research and Policy Development Implications <i>Alan T. Harland</i> .....	
35	
<i>Sanctions vs. Punishments</i> <i>Alan T. Harland</i> .....	
41	
<i>Programs vs. Their Component Sanctions</i> <i>Alan T. Harland</i> .....	
42	
7. Creating Sentencing Policy <i>Kay A. Knapp</i> .....	
45	
8. Agreeing on Goals: The Heart of the Process <i>Peggy McGarry</i> .....	
59	
9. Developing a Common Frame of Reference <i>Peggy McGarry</i> .....	
71	
10. Building an Information System to Monitor Sentencing <i>Kay A. Knapp</i> .....	
79	
11. The Experiential Approach to Targeting <i>Madeline M. Carter</i> .....	
91	
12. An Analytical Approach to Targeting <i>Kay A. Knapp and Madeline M. Carter</i> .....	
101	
13. Program Design <i>Madeline M. Carter</i> .....	
113	
14. Bringing the Process Home: Making It Work in Your Agency <i>Dorothy Faust</i> .....	
123	
15. Taking It to the Public <i>Barbara Krauth</i> .....	
129	

---

## *List of Exhibits*

<b>Exhibit 2-1</b>	<b>An Overview of the Handbook's Contents .....</b>	<b>10</b>	<b>Exhibit 11-2</b>	<b>Sample Interview Format: Program Administrators' Views on the Use of Intermediate Sanctions Programs .....</b>	<b>94</b>
<b>Exhibit 4-1</b>	<b>Thoughts on Planning Key Meetings.....</b>	<b>23</b>	<b>Exhibit 11-3</b>	<b>A Shopper's Guide to Correctional Programs .....</b>	<b>96</b>
<b>Exhibit 7-1</b>	<b>Position Paper on Criminal Sanctioning, Colorado Criminal Justice Commission .....</b>	<b>47</b>	<b>Exhibit 12-1</b>	<b>Structured Sentencing Simulation Model .....</b>	<b>103</b>
<b>Exhibit 7-2</b>	<b>Organizational Structure and Mission, Sacramento County Criminal Justice Cabinet .....</b>	<b>50</b>	<b>Exhibit 13-1</b>	<b>How Objectives Shape Programs: The Day-Reporting Center .....</b>	<b>116</b>
<b>Exhibit 7-3</b>	<b>Minnesota Sentencing Guidelines and Commentary .....</b>	<b>53</b>	<b>Exhibit 13-2</b>	<b>An Analytical Approach to the Examination of Correctional Options .....</b>	<b>119</b>
<b>Exhibit 8-1</b>	<b>Policy Statement, Colorado Criminal Justice Commission .....</b>	<b>64</b>	<b>Exhibit 14-1</b>	<b>Sentencing in the 90's: The Need for Alternatives; Training Agenda, Maricopa County, Arizona.....</b>	<b>125</b>
<b>Exhibit 9-1</b>	<b>Flow Chart of Bridgeport Process, Bridgeport, Connecticut.....</b>	<b>73</b>	<b>Exhibit 14-2</b>	<b>Maricopa County Adult Probation Department Mission Statement .....</b>	<b>126</b>
<b>Exhibit 9-2</b>	<b>Analysis of Intermediate Punishment Profiles, Sacramento County, California .....</b>	<b>75</b>	<b>Exhibit 14-3</b>	<b>Vision and Values in Marion County Corrections Billy Wasson .....</b>	<b>127</b>
<b>Exhibit 10-1</b>	<b>Sacramento County Criminal Justice Data Inventory Report.....</b>	<b>82</b>	<b>Exhibit 15-1</b>	<b>Looking for Economies in Justice Leonard Inskip .....</b>	<b>133</b>
<b>Exhibit 10-2</b>	<b>King County, Washington, Misdemeanor Sentencing Study, Source of Data Items .....</b>	<b>85</b>	<b>Exhibit 15-2</b>	<b>Alternative Sentencing: Selling It to the Public The Honorable Michael N. Castle ...</b>	<b>135</b>
<b>Exhibit 11-1</b>	<b>Sample Interview Format: Policymakers' Views on the Use of Intermediate Sanctions Programs...</b>	<b>93</b>			

---

---

*List of Exercises*

---

<i>Exercise 3-1</i>	<i>Establishing a Policy Team</i>	15
<i>Exercise 3-2</i>	<i>Getting an Established Policy Team Under Way</i>	17
<i>Exercise 5-1</i>	<i>Building a Policy Team</i>	32
<i>Exercise 5-2</i>	<i>Conducting an Environmental Scan</i>	33
<i>Exercise 5-3</i>	<i>Conducting a Power Analysis</i>	34
<i>Exercise 7-1</i>	<i>The Interests and Risks Involved in Developing Policy</i>	54
<i>Exercise 8-1</i>	<i>Some Suggestions for Discussing and Reaching Agreement on Goals</i>	69
<i>Exercise 10-1</i>	<i>Developing an Effective Monitoring System</i>	86
<i>Exercise 10-2</i>	<i>Testing a Monitoring System</i>	88

## *List of Figures*

---

<i>Figure 6-1</i>	<i>Summary Listing of Coercive Measures and Sanctioning Options</i> .....	38
<i>Figure 6-2</i>	<i>Illustration of Scaling Possibilities for Criminal Sanctions: Type of Sanction, by Scaling Dimensions and Units of Measurement</i> .....	40
<i>Figure 12-1</i>	<i>Representation of the Undifferentiated Universe of Offenders</i> .....	104
<i>Figure 12-2</i>	<i>Representation of Substantively Relevant Offender Groups</i> .....	104
<i>Figure 12-3</i>	<i>Representation of Substantively Relevant Offender Groups - Further Refined</i> .....	105
<i>Figure 12-4</i>	<i>Representation of the Current Use of Sanctions by Differentiated Offender Groups</i> .....	106
<i>Figure 12-5</i>	<i>Representation of Modifications Made to the Use of Sanctions by Differentiated Offender Groups</i> .....	108

---

---

*List of Discussion Outlines*

---

<i>Chapter 3</i>	<b><i>What Are Intermediate Sanctions? ..</i></b>	<b>18</b>
<i>Chapter 4</i>	<b><i>Essential Ingredients for Success ..</i></b>	<b>26</b>
<i>Chapter 6</i>	<b><i>Defining a Continuum of Sanctions ..</i></b>	<b>44</b>
<i>Chapter 7</i>	<b><i>Creating Sentencing Policy .....</i></b>	<b>55</b>
<i>Chapter 9</i>	<b><i>Developing a Common Frame of Reference .....</i></b>	<b>77</b>
<i>Chapter 10</i>	<b><i>Building an Information System to Monitor Sentencing .....</i></b>	<b>89</b>
<i>Chapter 11</i>	<b><i>The Experiential Approach to Targeting .....</i></b>	<b>98</b>
<i>Chapter 12</i>	<b><i>An Analytical Approach to Targeting .....</i></b>	<b>110</b>
<i>Chapter 13</i>	<b><i>Program Design .....</i></b>	<b>121</b>
<i>Chapter 15</i>	<b><i>Taking It to the Public .....</i></b>	<b>140</b>

 *sentencing is one of a judge's most important and difficult responsibilities. In exercising their sentencing discretion, judges seek to impose the sanction that best serves the need to punish, rehabilitate, incapacitate, or deter an offender. Too often, sentencing choices are limited to probation or incarceration, with few options available between the two.*

*Even when intermediate options are available, judges and other criminal justice officials have hesitated to use them because they fear appearing soft on crime. Sometimes multiple sanctions are imposed without an understanding of the practical value of each component of the sanction or the offender's ability to comply. Now, in an era of critical budget cutbacks, the criminal justice community has the responsibility to develop community sanctions that will accomplish the objectives of sentencing without overburdening jails and prisons or incurring substantial additional costs.*

*Over the past several years, there has been a proliferation of programs designed to increase the array of available sanctions. Often these programs are developed in isolation, without a policy framework to define the desired outcome and the offender groups for which each sanction is appropriate. The result frequently has been competition for resources and the frustration of unanticipated results—higher costs, higher revocation rates, more crowding. Beginning in 1989, the State Justice Institute (SJI) and the National Institute of Corrections (NIC) cosponsored a training and technical assistance program, the Intermediate Sanctions Project, to*

*develop a policy framework—and a plan to translate policy into action—in selected jurisdictions across the country.*

*The project was implemented by the Center for Effective Public Policy (CEPP) in collaboration with the National Center for State Courts. Two symposia were conducted for teams of key decisionmakers from 25 jurisdictions—the first in Phoenix in December 1989 and the second in Chicago in October 1991. These teams spent four intensive days engaging in the practical work of building policy on intermediate sanctions and setting an action agenda to guide the development effort in their home jurisdictions. Ongoing technical assistance was provided by CEPP to facilitate the teams' progress over the following 18 months.*

*One of the greatest benefits of the Symposia was the knowledge the participants shared with each other. Symposium participants, struggling to fashion more effective and realistic sanctions, found they had common issues to resolve. They discovered that they needed accurate information about the offenders in their systems. They discovered that implementing an effective range of sanctions requires an examination and understanding of the sentencing goals of the jurisdiction, and that the entire business was far more complex than simply purchasing electronic monitoring equipment or supervising probationers more intensively. They discovered that developing an effective array of sanctions requires the input and commitment of all elements of the criminal justice system—probation administrators, corrections officials,*

---

*judges, prosecutors, defense attorneys, law enforcement officials, and legislators. But most importantly, they discovered that the undertaking requires the leadership of the judge, to encourage dialogue among the agencies affected and to shape their diverse agendas into a common goal.*

*This handbook offers the collective expertise and experience of those who participated in the SJI/NIC project to other jurisdictions that wish to enhance their use of intermediate sanctions. It is provided in the spirit of practitioners informing practitioners, sharing firsthand knowledge of what must occur if intermediate sanctions are to be accepted and used effectively.*

*The best evidence of the practical value of this handbook is that many of the jurisdictions that engaged in the process it describes have made significant progress toward their goals concerning intermediate sanctions. We offer two examples: In Maricopa County, Arizona, the intermediate sanctions project team has been institutionalized within the county as the criminal justice policy group. These criminal justice officials confront the day-to-day problems facing their system as a team and not as independent actors. They have successfully dealt with a serious jail crowding problem—exploring who and how many enter jail, at what point, for what reason, and what each part of the system must do to remedy the problem. Because of the group's credibility and leadership, the system responded. Within a short period, the policy group was able to reduce the jail population by 450, the number required by*

*a federal court order. In Ramsey County, Minnesota, the intermediate sanctions team identified early in the process the offender groups that they wanted to target for intermediate sanctions. In order to create some of the resources that they needed for these programs, the team identified other groups of offenders for less intensive sanctions (group supervision meetings, for example, where this was appropriate) and used the resources so saved for the new sanctions. The team has created at least six new programs. The judicial members of the team brought the new programs and their target populations to the bench and had the entire bench vote on their acceptance of both. This handbook spells out how the intermediate sanctions policy development process helped both Maricopa County and Ramsey County achieve their goals.*

*The State Justice Institute and the National Institute of Corrections expect that the handbook will serve as a planning resource and catalyst for action in facilitating the design of more effective systems of intermediate sanctions in states and localities throughout the country.*



**David I. Tevelin**  
Executive Director  
State Justice Institute



**Larry Solomon**  
Deputy Director  
National Institute of Corrections

## Acknowledgments

This handbook is the product of a project that has included the participation of 25 jurisdictions, two funding agencies, and numerous cooperating private organizations, consultants, and practitioners.

The Intermediate Sanctions Project came into being as a result of conversations between the State Justice Institute (SJI) and the National Institute of Corrections (NIC). Those agencies had the vision to believe that their respective constituents—local courts and corrections agencies—must and would cooperate on this vital topic just as they had.

From the beginning, the vision of the SJI and the NIC generated an energy and enthusiasm that has given the project impact beyond the jurisdictions that were direct participants. Those of us who ran the project day-to-day were able to call upon distinguished judges, court administrators, probation executives, prosecutors, defense attorneys, and academics to assist us before we had so much as made a public announcement about the project. Professionals from all sectors of the criminal justice system were convinced from the outset of the value of this approach to this topic at this moment.

As the director of the Intermediate Sanctions Project, I have had the privilege of working with and learning from all of the people who have played a role in this effort. Personally and on behalf of the project, I want to express appreciation for their contributions to our common work and to the learnings that this handbook represents:

- The staff and policymakers from the 25 jurisdictions who participated in the project and whose commitment to creating more effective justice made it possible. Recording all of their names would fill pages, and even then we would surely leave many out.
- The project managers, Phyllis Modley from NIC and Kathy Schwartz from SJI, who have combined helpful experience and thoughtful observations with unflagging support and enthusiasm.
- The chief of NIC's Community Corrections Division, George Keiser, whose wisdom, experience, and insights made major contributions to the direction and shape of this project.
- The leadership of former NIC Director Wayne Huggins and Deputy Director Larry Solomon, who believed in this effort and helped spread its message.
- The leadership of SJI Executive Director David Tevelin and Deputy Director Richard Van Duizend, who helped to forge the vision of cooperative decisionmaking that led to the creation of the project.
- Members of the project's advisory board, all of whom gave generously of their time and wisdom to provide direction to the project.

- 
- Alan Schuman, former Director of Social Services for the Superior Court of the District of Columbia, who worked hard to turn the idea of policy-driven intermediate sanctions into a program of national assistance, and whose experience and support have continued to shape the project.
  - Barry Mahoney, our colleague from Denver, Colorado, Principal with the Justice Management Institute, who brought his years of experience with the courts to bear on the project's ongoing design.
  - The staff of the Center for Effective Public Policy—Peggy Burke, Madeline (Mimi) Carter, Becki Ney, Ann Marie Kent, and Gerry Welch—who have done the day-to-day work on the project, from providing technical assistance to putting binders together for workshops. It has been their persistence in drawing out the lessons from the combined experience of the participating jurisdictions that led to this handbook.
  - Kay Knapp, Director of the Institute for Rational Public Policy; Alan Harland, Associate Professor of Criminal Justice at Temple University; Kay Harris, Associate Professor of Criminal Justice at Temple; and Linda Adams, former Senior Associate at the Center for Effective Public Policy, who have provided important conceptual frameworks for our work and technical assistance to many of the jurisdictions involved in the project.
  - Our many colleagues from private and public agencies who have provided technical assistance and training to project participants: Judy Greene of the Vera Institute of Justice; Mary Mande of MJM Consulting Services; Billy Wasson of the Marion County (Oregon) Department of Corrections; Bill Woodward of the Colorado Department of Public Safety; and Dot Faust of the Maricopa County (Arizona) Adult Probation Agency.
  - Dennis Schrantz, Executive Director of the Michigan Office of Community Corrections, who has provided the project and its staff with important technical concepts, consistent feedback and support, and many much-needed laughs along the way.
  - Barbara Krauth, whose skilled editing has contributed significantly to making this handbook more readable and understandable.
- These are all people who care deeply about the impact of the criminal justice system on the life of our communities, and who give tirelessly of themselves for its improvement. They are a constant source of inspiration to me and many others.



Peggy McGarry

Project Director

Center for Effective Public Policy

### **The Intermediate Sanctions Project: The Context of This Handbook**

*Peggy McGarry*

**Introduction** This handbook and the experience it represents are products of the Intermediate Sanctions Project, sponsored by the National Institute of Corrections (NIC) and the State Justice Institute (SJI). The two agencies acted in response to the growing interest of states and local jurisdictions in the development of intermediate sanctions. In large urban court systems from New York City to Phoenix, and in smaller systems from Bridgeport, Connecticut, to Kansas City, Missouri, the project has observed and participated in the process of policy development by which courts, joining with state and local governments, seek to guide the use of intermediate sanctioning options.

#### **History of the Intermediate Sanctions Project**

The State Justice Institute (SJI) and the National Institute of Corrections (NIC) were established to serve the needs of local constituent bodies: state courts in the case of SJI; state and local corrections agencies in the case of NIC. The joint initiative that led to the Intermediate Sanctions Project had its roots in their perception that both the courts and corrections were dissatisfied with the availability and use of intermediate sanctions and that part of the dissatisfaction derived from a lack of communication between the two groups. The original intent of the project, therefore, was to enhance the dialogue between the courts and corrections agencies about sentencing in order to improve the use of intermediate sanctions.

Late in 1988, NIC and SJI awarded a contract to the Center for Effective Public Policy, in collaboration with the Institute for Court Management of the National Center for State Courts, to administer the Intermediate Sanctions Project. Public announcement of the project was made in June 1989, with participation limited to

12 local courts and governments. Thirty-eight jurisdictions applied, despite the absence of any local financial assistance and requirements of a detailed application and the commitment in writing of high-level policymakers to attend a four-day symposium.

Project staff and sponsors selected the following 12 initial jurisdictions in August 1989:

- Mobile, Alabama
- Maricopa County (Phoenix), Arizona
- San Mateo County, California
- District of Columbia
- Second Judicial District (Tallahassee), Florida
- 20th Judicial District (Belleville), Illinois
- Third Judicial District (Detroit), Michigan
- Ramsey County (St. Paul), Minnesota
- Jackson County (Kansas City), Missouri
- New York City, New York
- Mecklenburg County (Charlotte), North Carolina
- Harris County (Houston), Texas.

Round I project activities began with a symposium for teams of policymakers from the 12 sites in December 1989 and continued through 1990 and 1991 with

followup technical assistance. The project concluded its work with these jurisdictions in 1992.

The project's staff and funders continued to receive inquiries from jurisdictions and organizations interested in the experience and activities of the original sites. Because of this interest, NIC and SJI authorized a second round of the project. They expanded eligibility for Round II to state-level efforts and set aside an additional place for a federal court-based team.

A total of 50 state and local jurisdictions applied for participation in Round II by the June 1991 deadline. Twelve of them, plus a federal team, were selected:

- Alaska Sentencing Commission
- Sacramento County, California
- Ventura County, California
- Colorado Criminal Justice Commission
- Bridgeport, Connecticut
- Dade County (Miami), Florida
- Jefferson County (Louisville), Kentucky
- Montgomery County, Maryland
- Dakota County, Minnesota
- Cuyahoga County (Cleveland), Ohio
- U.S. District Court for the Northern District of Ohio
- King County (Seattle), Washington
- Washington State Sentencing Guidelines Commission.

The original goal of the project—to enhance the dialogue between courts and corrections about sentencing—was expanded. When project staff began working with the jurisdictions, it quickly became clear that sentencing is a complex process involving more stakeholders and actors than just courts and corrections. To affect that process successfully, jurisdictions must form policy groups that include state and local legislators, the prosecutor, the defense bar, and law enforcement, in addition to the courts and corrections. In Round II, the project required participating jurisdictions to create policy groups with all of these agencies represented. From those groups, each jurisdiction chose a core team to attend the Round II kickoff symposium in October 1991.

Through symposia and workshops, onsite technical assistance and information sharing, the project has offered participating jurisdictions a wide range of support. The assistance has been as diverse as facilitating key meetings of policymakers in a jurisdiction to assessing the strengths and weaknesses of an automated data system; from providing testimony to legislative bodies to critiquing a program development plan.

The project's efforts have been aimed at supporting the development of coherent policy to guide the creation and use of intermediate sanctions. Such policy is designed to articulate the system's goals, determine the content of the sanctioning options needed to achieve those goals,

specify the target population for which each option is intended, and devise the methods by which the appropriate population is directed to each option.

The project will continue its work with the Round II sites through 1993. The interest of state and local policymakers in intermediate sanctions remains keen. In an effort to respond to that interest, the project is capturing and disseminating the lessons of the 25 participating jurisdictions in training curricula, workshops, and materials for wider use by other jurisdictions. This handbook is a major part of that effort.

## Intermediate Sanctions: A View from the Judiciary

*The Honorable Roger K. Warren  
Superior Court of California  
Sacramento, California*

The American public is increasingly concerned about our criminal justice sentencing policies. Current policies are often viewed as lenient, ineffective, and costly; repeat offenders circulate through what appears to be a revolving door to the criminal justice system; probation supervision seems to be a joke.

Despite increased legislative restriction of judicial sentencing discretion, it is judges who remain primarily responsible for establishing sentencing policies, i.e., for determining which offenders get what sentences. The judiciary is usually directly responsible for the sentencing choice and is held accountable for the consequences of that decision by an increasingly frustrated public. The judiciary must, therefore, address the substantial professional and public criticism of our current sentencing policies.

But judges' exercise of judgment and discretion is severely limited not only by legislatively mandated punishments, but also by the paucity of sentencing alternatives available. Often few viable alternatives exist for the offender who deserves a disposition somewhere between minimally supervised probation and long-term incarceration in a state penal institution. Sentencing goals such as punishment, public protection, rehabilitation, and restitution to the victim, for example, do not necessarily require long-term incarceration of these intermediate offenders. However, regular probation supervision

may not adequately achieve such sentencing goals either. Judges are forced to choose between inadequate alternatives and do not have the necessary tools to carry out their sentencing objectives. The inadequacy of existing alternatives is especially apparent in jurisdictions where corrections resources have not expanded to keep pace with explosive growth in the number of criminal offenders.

Judges have an interest in ensuring that the intermediate sentencing options available are designed, implemented, and operated in a cost-effective manner to accomplish their sentencing objectives for the offenders selected. Otherwise, judges will be held responsible for failed sentencing policies and programs.

Although judges have a responsibility for, and interest in, the development of intermediate sanctions programs that meet their own sentencing goals, the judiciary lacks the authority to create such programs. Because judges do not have the power to appropriate funds or operate corrections programs, the development of such programs requires the establishment of interagency policymaking teams that include representatives of all three branches of government. Furthermore, such programs will not be successful unless they enjoy the respect and support of law enforcement, the prosecution, and the defense bar.

Any viable intermediate sanctions program, therefore, requires a degree of con-

sensus among criminal justice agencies on the correctional objectives and the appropriate (target) offenders to be served by the program. As long as the sentencing goals of legislative, law enforcement, prosecution, defense, corrections, and judicial agencies remain inconsistent or unreconciled, or there is disagreement over which offenders would participate in these programs, it is unlikely that a workable intermediate sanctions program can be developed or sustained.

In addition, because not all intermediate offenders are alike, what is needed is not a single program, but rather an array or range of programs that, taken together, represent a criminal justice system's best judgment on the most cost-effective way to achieve the system's sentencing goals for such offenders.

It is vital that judges take an active role in interagency policymaking activities on intermediate sanctions in order to (1) assist in the development of intermediate sanctions programs, (2) ensure that judges are satisfied with the correctional objectives and selection of offenders to be served by the programs, (3) help bring about a degree of consensus in the criminal justice system regarding appropriate sentencing goals for and proper selection of intermediate offenders, and (4) ensure that intermediate sanctions programs are designed, implemented, and operated in a cost-effective manner to accomplish the judges' sentencing objectives.

---

## *Intermediate Sanctions: A New Approach to Sentencing*

*Andrew S. Liskov, Supervising Attorney  
Public Defender's Office, G.A. 2  
Bridgeport, Connecticut*

Traditionally, criminal defense attorneys have thought that an excellent disposition for a guilty client facing many years of incarceration was a sentence of “short-time” jail, probation, or a combination of the two. However, with correctional centers across the nation bulging at the seams and probation caseloads at levels that allow only limited supervision, alternative sentencing options have become an absolute necessity.

Of course, the problems of probation caseloads and overcrowded jails are not a chief priority to defense attorneys in representing their clients. Nevertheless, many in the defense bar, including me, have come to realize that a much wider menu of court options is necessary for effective client representation. The “excellent disposition” described above has become, at best, a temporary bandage to our clients. What is necessary to replace the traditional jail/probation options are sentences that make sense.

I intend to briefly discuss, from the defense perspective, the importance of a sentencing policy for the use of intermediate sanctions and the necessity of including the defense in formulating such a policy. I draw from my experience as a member of the policy team for intermediate sanctions that is currently in place at the Bridgeport, Connecticut, Superior Court.

Before discussing the importance of intermediate sanctions as an alternative to incarceration, I must raise an initial point. The defense must realize that not all defendants are appropriate for the intermediate sanctions option. It is critically important that the defense not “load up” various treatment modalities or opt for an alternative-to-incarceration sentence if successful treatment and/or cooperation is totally unrealistic. The defense attorney must maintain credibility with the court to ensure the maximum possibility for suitable clients to be sentenced to alternative-to-incarceration options.

For the vast majority of defendants, intermediate sanctions are the only meaningful sentencing policy. Incarceration today serves no rehabilitative purpose and is no more than a brief rest stop before the next arrest. Traditional probation, via reporting, has become little more than a “Count me—I’m here” head check.

Conversely, intermediate sanctions can offer a broad range of alternatives to meaningless punishment. Various options available to the court by way of intermediate sanctions include alternative incarceration centers, community service work, residential and outpatient treatment programs, halfway houses, and day fines. These are only a few of the many sanctions that make sense and give meaning to a defendant’s life. They also offer a viable solution to the problems of jail overcrowding and recidivism.

To formulate an intermediate sentencing policy for a jurisdiction, it is essential that a policymaking team be created. This group must be strongly committed to making changes in the traditional sentencing options, and be willing to frankly discuss ideas, collaborate, and remain focused on the goal of initiating new intermediate sanctions or improving those already in place.

It is essential that the defense be represented on this team. Since the sanctions are designed for the defendant, it would be ludicrous to formulate policies without input and guidance from the defense perspective. An experienced criminal defense attorney can convey valuable information to the other policymakers about the effectiveness of intermediate sanctions within a particular jurisdiction.

For the first time in my many years of defending people, I am finally beginning to see, as a result of intermediate sanctions, sentences that make sense. Lately, I have begun to notice my clients returning to court for visits, rather than appearing as the result of new arrests. These are clients who have been offered and have taken full advantage of intermediate sanctions. They are coming in to tell us of their progress and newly found hope for their futures. It is new and different, a fresh breeze over a soiled landscape. I rather like it.

## **Intermediate Sanctions: A View from Probation**

*Norman Helber, Chief Probation Officer  
Maricopa County Adult Probation Department  
Maricopa County, Arizona*

One hundred fifty years ago John Augustus developed the concept of probation, under the premise that people can change. Even today, most probation professionals believe that people can change and that offering hope to offenders can make a difference. While many offenders and communities are surrounded by pessimism, despair, and indifference, most probation professionals recognize intermediate sanctions as the most feasible option available to offer hope for offenders and the community.

Over the years, many probation agencies have used their strategic position in the criminal justice system to identify appropriate offender populations and to implement effective community-based sentencing alternatives. Examples include intensive probation supervision, day fines, day reporting centers, drug courts, restitution centers, and residential and outpatient treatment programs. These intermediate sanctions and programs have served to divert offenders from incarceration while providing them an opportunity to address problems such as substance abuse, job skill development, and finan-

cial and family issues. Probation professionals have demonstrated that intermediate sanctions can work; they work because they address the individual needs of the offenders and the collective needs of the community. From the probation perspective, offering an array of controls and services in the community for selected offenders is not only cost effective, but it is also the right thing to do.

An intermediate sanctions continuum cannot be effectively developed and integrated into a rational sentencing policy without a strong consensus among all the stakeholders of the criminal justice system. Although the probation and community corrections industry is poised to lead the way in developing intermediate sanctions, prosecutors, judges, defense attorneys, law enforcement officers, legislators, community representatives, and community program practitioners must come together to define sentencing and correctional goals and target appropriate offender populations. Without the establishment of an interagency and multidisciplinary intermediate sanctions policymaking team with representation from government, private industry, and the community, the criminal justice system will continue to be inconsistent and

fragmented. All stakeholders of the system will continue to experience jail overcrowding crises, disparate sentencing outcomes, and offender and community despair.

The practice of sentencing offenders, particularly nonviolent offenders, to intermediate sanctions is gaining momentum. Requests for new prison construction are being met with increasing public resistance. There now exists an opportunity to mold public opinion and initiate positive change in public sentiment toward the criminal justice system. The general public will support intermediate sanctions if we demonstrate their cost effectiveness and their value for balancing rehabilitation, punishment, and public safety.

Probation professionals must continue to believe that offenders can change. From the probation perspective, the vision of the future is one that offers hope for the community at large, and also hope for the offender that his or her circumstances might improve. Probation professionals can continue to lead the system toward a policy of intermediate sanctions by articulating our vision for the future and publicly sharing our successes.

---

**Exhibit 2-1****An Overview of the Handbook's Contents**

<b>Components of the Process</b>	<b>Handbook Chapters</b>	
Introduction	Chapter 1:	The Intermediate Sanctions Project: The Context of This Handbook
	Chapter 2:	Making This Handbook Work For You
	Chapter 3:	The Intermediate Sanctions Process: Rethinking Your Criminal Justice System
Building and Maintaining a Working Policy Group	Chapter 4: Chapter 5:	Essential Ingredients for Success Establishing and Maintaining the Policy Team
Choosing Goals and Outcomes	Chapter 8:	Agreeing on Goals: The Heart of the Process
Establishing Baseline Information About Your System	Chapter 9:	Developing a Common Frame of Reference
Establishing an Ongoing System of Monitoring Sentences	Chapter 10:	Building an Information System to Monitor Sentencing
Targeting	Chapter 11: Chapter 12: Chapter 13:	The Experiential Approach to Targeting An Analytical Approach to Targeting Program Design
Developing and Implementing Sentencing Policy	Chapter 6: Chapter 7:	Defining a Continuum of Sanctions: Some Research and Policy Development Implications Creating Sentencing Policy
Reviewing and Modifying Internal Policies	Chapter 14:	Bringing the Process Home: Making It Work in Your Agency
Building Public Support	Chapter 15:	Taking It to the Public

### The Intermediate Sanctions Process: Rethinking Your Criminal Justice System

Peggy McGarry

---

**Introduction** In large urban courts like Phoenix, Arizona, and Houston, Texas, and in diverse smaller counties like Sacramento County, California, and Dakota County, Minnesota, the Intermediate Sanctions Project has involved policymakers from the courts, corrections and law enforcement agencies, and state and local governments. Their efforts have focused on developing and implementing policy-driven intermediate sanctions—a range of sanctioning options short of total incarceration.

These policymakers—judges, county commissioners, prosecutors, sheriffs, probation officials, defense attorneys, state legislators, and their colleagues—have shared their struggles, fears, concerns, and frustrations with project staff and consultants in the frankest terms. They have opened their meetings and allowed staff and consultants to help them articulate their vision; they have shared agendas, program plans, research designs, and data collection instruments and asked us to critique them; and they have invited our advice and observation as they devised and carried out strategies with key constituencies. This handbook is an effort to repay that trust and openness by capturing the knowledge gained through their efforts.

---

#### **Why Intermediate Sanctions?**

The interest in intermediate sanctions in most jurisdictions is driven by profound dissatisfaction with the outcomes of most existing sanctions, particularly in light of their cost. The specific outcomes desired vary depending on the agency or policymaking body, but the frustration about current options is widely shared. Whether judges or legislators, law enforcement or corrections officials, criminal justice system policymakers all want the ability to respond appropriately to the diversity of offenses and types of offenders coming through the system.

These policymakers hope that by creating a new array of sanctioning programs they will make sentencing more just and effective for offenders, enhance public safety, increase local corrections capacity, contain growth in prison and jail populations, and reduce costs.

Some would argue that these expectations are unrealistic for any criminal sanctioning system. The central issue here, however, is identifying the source of the problems that these new programs are supposed to address: the ineffective, costly, and overcrowded state of our current sanctions.

---

*Our experience indicates that it is not the failure of the programs—in number, inventiveness, or sophistication—that has produced ineffective and frustrating results, but rather the failure of the system that surrounds them to behave as a system.*

---

In jurisdiction after jurisdiction, public and private agencies have created a wide variety of programs and options for use at sentencing. In some places, the total capacity of community-based sanctions has been increased many times over. With the advent of new technologies for assessment and supervision, new methods of intervention, and an increased understanding of targeting, the capability of

those agencies to manage offenders safely in the community has expanded as well. Yet the search goes on for new approaches that, if tried, would make that long-awaited difference in sentencing.

No program or sentencing option can achieve its full potential if it is used with the wrong population, nor will it be seen as successful if its purpose is misunderstood. Our experience indicates that it is not the failure of the **programs**—in number, inventiveness, or sophistication—that has produced ineffective and frustrating results, but rather the failure of the system that surrounds them to behave as a system.

The failure of the system takes a number of forms: a lack of communication among the actors and agencies about the capabilities and limitations of sentencing options; the absence of an agreement on specific populations and outcomes for which these options are best suited; a lack of information about the sentencing process and of hard data about the offenders who come through it; and, most importantly, the absence of a vision or articulated mission for the entire sanctioning enterprise.

It is in the process of developing policy—that is, of articulating desired

goals and outcomes for its efforts, gathering and using information to support choices among options, examining and reexamining how well the chosen options are doing at meeting the intended goals, and holding itself accountable as a unified enterprise—that the criminal justice system behaves as a system.

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

#### **What Do We Mean by Policy?**

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

In the case of sentencing, policy should express the main purpose for sentencing: the reason for responding at all to criminal behavior. This is the mission statement of

*Sanctions that are devised and implemented without the participation of the decisionmakers who will use them are likely to be a disappointment.*

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

In the case of intermediate sanctions, a primary motivation in most jurisdictions and among most policymakers is the ability to respond appropriately to a diversity of offenses and offenders. Therefore, policy on intermediate sanctions is usually fairly specific in:

- spelling out the categories of cases that are to be directed to intermediate sanctions;
- describing in detail the offense and offender characteristics of cases in each category;
- defining the outcomes or goals that are sought for each of those categories; and
- describing the kinds of responses that are appropriate for each group.

Because of the diverse sources of decisionmaking and influence on decisionmaking in the area of sentencing, policy related to intermediate sanctions must also describe the means by which this matching of population group and sanction will be carried out:

- How will a jurisdiction ensure that sentencing practices actually reflect the matching of offender group and sanction?
- How will sentencing practices affect the day-to-day behavior of prosecutors, defense attorneys, judges, and probation officers writing presentence recommendations?

All of these are choices that the policymakers must make.

#### **What Are Intermediate Sanctions?**

The difficulty for many jurisdictions is that the term “intermediate sanctions” is used to refer both to specific sanctioning options or programs and to the overall concept of a graduated range of sentencing choices guided by an articulated policy framework. Creating intermediate sanctions in a jurisdiction requires the development of **both** a range of sanctioning options **and** a coherent policy to guide their use. Sanctions that are devised and implemented without the participation of the decisionmakers who will use them are likely to be a disappointment.

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

Those options might include means-based or day fines; community service and restitution (ordered ad hoc or organized as programs); special-needs probation programs or caseloads (for some categories of domestic violence, sex offenses, or drunk driving cases, for example, or for mentally ill or mentally retarded offenders); outpatient and residential drug treatment centers; day centers and/or residential centers for other treatment, training, or similar purpose; intensive supervision probation; day centers for monitoring and supervision; curfews; house arrest (with or without electronic monitoring); halfway houses or work-release centers; and a number of other sanctions short of total incarceration.

Developing a range of sanctions typically means rationalizing the use of all correctional resources within a jurisdiction. If a jurisdiction seeks to create

*“During the Symposium itself, and after our return to Ventura County, the Ventura team decided to pursue implementation of a day fines program as a catalyst for establishing the desired interagency process in approaching intermediate sanctions. All team members were in agreement and much enthusiasm existed regarding the program’s prospects.*

*“During November, the presiding judge and the district attorney made a presentation to the bench asking for their support for day fines. Unfortunately, to our surprise, the judges declined to support such a program and the effort came to a dead end. I suppose this experience demonstrates that locking into a specific program rather than pursuing a process is very risky business.”*

*—Bill Forden, retired Chief Probation Officer, Ventura County, California; excerpt from the *Intermediate Sanctions Project Newsletter**

specific responses to specific offender behaviors and/or characteristics, then it must also define the best use of its existing options.

As part of the effort to develop a range of sanctions, jurisdictions must also examine their responses to violation behavior by offenders in any of these sanctions. Such an examination looks not only at the options available but also at their usefulness in achieving the outcome originally desired at the time of sentencing.

#### **What Does It Take?**

For a state or local jurisdiction to create a **policy-driven** range of intermediate sanctions, the key policy- and decision-makers in the jurisdiction must agree to some fundamental changes in the way they do business. In effect, they must make the criminal justice system behave like a system. Several key elements are necessary to achieve that goal:

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

The experimentation and expansion going on in corrections around this country have happened without adequate reference to the concerns and interests of the actors in that process. In most jurisdictions, no forum exists for these actors to discuss with others the outcomes they want for sentencing. Unless key actors acknowledge their interests, explore the implications of those interests for the creation of options, and address their differences, the options created will not earn the support and trust of the very people whose decisions guide their use.

The first step is to create a forum through which criminal justice policy-makers, elected officials, and other key groups can have regular dialogue on their interests and concerns about sentencing. With a process for sharing and compromise about outcomes in place, it is much more likely that sentencing options will

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

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

---

*For a state or local jurisdiction to create a policy-driven range of intermediate sanctions, the key policy- and decisionmakers in the jurisdiction must agree to some fundamental changes in the way they do business.*

---

**Second:** This effort at regular communication and dialogue must be led by the bench and given the resources needed to meet its objectives.

Given the adversarial nature of criminal court proceedings and the constitutionally separate responsibilities of the three branches of government in the criminal justice system, only judges—or, more precisely, presiding judges—have the stature and authority to call together all of the parties. This does not mean that the presiding judge must chair meetings or tend to agenda, but rather that the overall effort to establish and maintain regular dialogue must be made under his or her auspices and with his or her full support.

The process by which this group of decisionmakers builds a common understanding of one another and their system, gathers and uses information, and develops agreements about the policies surrounding intermediate sanctions and their use is complex and time-consuming. The process demands the dedication of staff to prepare for meetings, maintain communication between meetings, gather requested data, and perform other related tasks.

**Third:** This policy group of key actors must educate themselves about their own system.

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

- **How** the sentencing process actually happens in a jurisdiction: This can best be accomplished through the development of a system flow chart that shows how cases move through the system; the key decision points, decision options, and decisionmakers; the official and unofficial mechanisms by which the sentencing decision is influenced; and program characteristics and capacities.
- **Who** the offenders are that are coming through the system, and **what** their numbers are at different decision points. This involves attaching numbers to the system flow chart described above, and profiling offenders at different points.

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

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

---

**Exercise 3-1 continued**

### **Establishing a Policy Team**

---

on to discuss possible next steps in an action plan. Whoever is chairing or facilitating the meeting should summarize the areas of agreement and recommend either proceeding to plan future work together or ending the meeting. The entire group should decide on whether it agrees with the recommendation.

If the group decides to proceed, the rest of the meeting should be devoted to planning. Pay particular attention to the suggestions in Chapter 5 on the composition and first steps of a policy team. At a minimum the group should discuss the following points:

1. Who else needs to be involved?
2. What are some immediate next steps? Who will be responsible for them?

3. What resources can you call upon, at least initially, to support your work?
4. When will you meet again? What tasks should be accomplished by then?

**Third:** Review Exercise 3-2 for pointers on your next session, and then use the rest of the handbook to guide your subsequent efforts.

---

### **Exercise 3-2**

#### **Getting an Established Policy Team Under Way**

If your jurisdiction already has a policy group in place that is interested in pursuing the development of policy-driven intermediate sanctions, we suggest the following as a way to begin:

**First:** Read Chapter 5, Establishing and Maintaining the Policy Team, for some important tips on the formation and initiation of policy groups. That chapter has excellent suggestions for planning and conducting a first meeting.

**Second:** One of the group's first tasks will be to establish the goals toward which it will direct its efforts. The statement of those goals becomes the group's mission statement. In order to articulate its goals, the group first must identify common ground. This usually takes two forms: first, the problems that the members of the group all recognize and share a desire to address and, second, their vision of a system that would meet their ideal notion of criminal justice.

The following discussion questions are designed to help the group members find the goals and vision that they share. The discussion must have a facilitator who can shepherd the group through it, record it on a flipchart, and help the members to see the common threads in their responses.

These questions are all designed to elicit the same information, but each from a slightly different perspective. We suggest that the facilitator pose them sequentially as the responses to the preceding question wind down or cease to produce new information, ideas, or perspectives. Add your own questions if you like, or discard any that you do not think will work with your group.

1. Why do we need intermediate sanctions in this jurisdiction?
  - What are we hoping to accomplish?
  - What problems are we looking to correct?
2. What do we hope to gain from intermediate sanctions for ourselves or our agency?
  - What do we hope to gain for the whole system?
3. What would the criminal justice system here look like if we were successful?
  - What would be different?
  - What would stay the same?

4. How would our jobs be different?
5. Do we have anything like intermediate sanctions in place now? What are they?
  - What do we like or not like about them?
6. What is the most appealing feature of intermediate sanctions?
  - What will be most appealing to others in the system: judges, prosecutors, corrections, local government, or the public?

Record the responses on flipcharts. It is most helpful to have at least two flipcharts: one on which to list the "problems" and a second for the features of the ideal.

Go over the lists with the group. Identify the items most commonly mentioned. Ask the group members if they agree. Create a second set of lists that represents the areas of agreement. Ask the group to rank them in terms of importance.

You now have the elements from which a goal or mission statement can be written. Perhaps a subcommittee could take responsibility for producing a draft statement for the next meeting.

With a clearer picture of why the group is engaging in this effort, the group can move on to discuss a work plan.

- What would we have to do to get from where we are to our ideal?
- What would we have to know and learn?
- Who must be involved?
- Who can help us?

**Third:** As part of the work planning effort, the staff or the chair should review with the group the steps of the intermediate sanctions process presented in this handbook. Chapter 3, The Intermediate Sanctions Process: Rethinking Your Criminal Justice System, contains a discussion outline that is suitable for conversion to overheads or for reproduction on a chart. You may also want to reproduce it for handouts. The outline should assist you with the presentation to your policy group.

## What Are Intermediate Sanctions?

---

### I. **Intermediate Sanctions Are:**

- A.** A range of sanctioning options that permit the crafting of sentences to respond to:
  - the particular circumstances of the offender and the offense; and
  - the outcomes desired in the case.
  
- B.** A coherent policy to guide their use that:
  - specifies goals and outcomes;
  - specifies the place and purpose of every sanction within the total range; and
  - ensures that the sanctions are used for the offenders for whom they were created.

### II. **Policy Is:**

- A.** A statement of intent: Why are we engaging in this set of activities at all?
  
- B.** Instructions for how the intent is to be realized by those activities.

### III. **Intermediate Sanctions Can Be Whatever Policymakers Decide They Need and Can Afford, Tailored:**

- A.** To meet their goals; and
  
- B.** For their offender population.

### IV. **What Does It Take to Develop a Policy-driven Range of Intermediate Sanctions?**

- A.** Key actors in the criminal justice system must agree to regular, frank communication about the sentencing practices, options, and outcomes in their jurisdiction.
  
- B.** This effort at regular communication and dialogue must be led by the bench and given the resources needed to meet its objectives.
  
- C.** This group of key actors must educate themselves about their own system.

## **What Are Intermediate Sanctions?**

- 
- D.** The key actors in the criminal justice system must assume responsibility for the implementation and outcomes of sentencing decisions.
  - E.** The work of the policy group must be supported by needed changes in the individual agencies and offices represented on it.
  - F.** The end result should be agreement among key policy- and decisionmakers within the jurisdiction to some fundamental changes in the way they do business.

### **V. Six Essential Elements of the Intermediate Sanctions Process:**

- 1. An Identified and Organized Work Group:** to ensure coordinated and effective change.
- 2. The Availability and Use of Good Baseline Information:** to establish a common understanding about how the current system works.
- 3. A Continuing Process of Goal and Outcome Clarification:** for clarity in definitions of outcomes sought for both the change process and sanctions so that programs achieve desired goals.
- 4. A System Scanning Capability:** to use existing data and establish ongoing data gathering and analysis to monitor and evaluate proposals and programs to inform the policy development work.
- 5. An Ongoing Review of Policies and Practices of Individual Agencies:** to determine relevant agencies' policies and practices and develop an understanding of how they currently interact and how they should be changed.
- 6. Implementation:** to put agreed-upon changes in programs and practices into place.

## Essential Ingredients for Success

*Peggy McGarry*

---

**Introduction** As noted in Chapter 2, *Making This Handbook Work For You*, this volume is organized so that each chapter describes a specific task or aspect of the intermediate sanctions process. This chapter considers how the work to support all of these tasks will be accomplished, and by whom.

*Thinking carefully and strategically about how this work will be done and by whom is as critical to the success of your efforts as any other piece of the process. It is far worse to begin an undertaking of this sort, involving high-level (and very busy) policymakers, and have it fade or fail for lack of effective follow-through, than not to start at all. You risk using up your stock of good will, commitment, willingness, and cooperation that may be needed for future efforts of this sort.*

---

### **The Essential Components of the Intermediate Sanctions Process**

The intermediate sanctions process has several essential components:

1. **The policy group or policy team**—the group of high-level policymakers from the criminal justice system; the county, city, or state legislature; and perhaps the general public. The goals, values, and judgments of this decisionmaking body will guide the entire process.
2. **The activities**—the set of tasks through which the policy group will educate itself, process information, and make choices.
3. **The product**—a combination of policies to guide the use of local sanctions and the creation or restructuring of sanctions to meet the desired ends expressed in the policies.
4. **Implementation**—the process of putting into place the chosen policies and sanctioning options.

What this list of components does not capture is the support that is necessary for the policy group to function, engage issues and information, and create and implement policies and programs. A number of factors determine what kinds and levels of resources are required to sustain this effort. These factors include the size of the criminal

resources needed are expressions of the fundamental requirement of this endeavor: the full commitment of policymakers to its success.

### **Staff Resources**

Many of the tasks and activities associated with this process require time and assistance from staff. The reality in most jurisdictions is that if the policy group includes the right people, the members of that group will have neither the time nor the inclination to take care of the routine work that must be done. That work includes a variety of tasks:

### **Staff Responsibilities**

Staff are likely to be responsible for:

- **Developing long- and short-term work plans and determining how each meeting will assist in fulfilling them.**

Work plans differ from goals and outcomes, which the policy group itself must determine. Work plans sketch out the steps to get there, the key personnel, and estimates of the time needed for completion. These become the road maps that let you see where you are heading and the milestones to mark your advance along the way. (Unlike road maps, however, these plans are never fixed; they must be reassessed regularly to be sure they still make sense.)

---

*Both tangible and intangible resources are needed to support the intermediate sanctions process. Staff and money are necessary, but so are trust, cooperation, and access. Whether tangible or not, the resources needed are expressions of the fundamental requirement of this endeavor: the full commitment of policymakers to its success.*

justice system, the extent of political polarization or organizational competition among the key decisionmakers, and the availability of automated data.

Both tangible and intangible resources are needed to support the intermediate sanctions process. Staff and money are necessary, but so are trust, cooperation, and access. Whether tangible or not, the

With work plans in place, the group should be able to determine at what points it should meet and to identify the specific tasks—decisions made, information processed, proposals approved—it must complete to move the process forward. Work plans make it possible to avoid unnecessary meetings, which produce frustration and annoyance at wasting time and may lead to members' withdrawal from participation.

- ***Making sure that meetings take place when they are needed.***

Whether meetings are held on a regular schedule, arranged at the end of each gathering, or called as needed, someone must reconfirm individual calendars, reserve the meeting place, arrange for equipment and supplies, and invite guests and presenters. If meetings are held only as needed, staff may have to decide when that point has been reached and set a date for a meeting.

- ***Devising the agenda for meetings.***

Agendas for meetings of key decision-makers should be created with attention to both the meeting's purpose and its rhythm. A mixture of information sharing, discussion, and action is most likely to engender the sense of involvement and empowerment that makes a group productive.

- ***Providing follow-up to meetings.***

Follow-up takes two forms. The first involves tending to members' commitment to the group. An unexpected absence or multiple absences, even if expected, should prompt a concerned inquiry: Are there scheduling problems? Should the regular meeting time be changed? Is the person bored or feeling shut out of decisionmaking? Are his or her concerns being addressed?

The second type of follow-up is aimed at keeping members from feeling that they or their issues are being ignored. It means keeping track of questions and concerns raised during meetings,

researching an answer or looking for additional information afterward, and then providing it to the group either at or before the next meeting.

- ***Providing the policy group with necessary information.***

Information is crucial to the intermediate sanctions process, as the rest of this handbook makes clear. Staff may be called upon to retrieve and analyze data, and present results in a way that is useful to members and responsive to their questions and concerns.

Providing needed information to the policy group has other dimensions. Members may require assistance in framing questions, understanding information provided to them, appreciating the limitations on readily available data and information, and using the data effectively to inform their policy and program choices.

- ***Developing proposals for policy group action.***

Although the policy group will select its own priorities for action, it will look to staff to develop specific details of proposed policies, changes in practice, research questions, sanctioning programs, resource reallocations, and other areas of interest.

- ***Producing implementation plans for chosen actions.***

Implementation planning requires careful attention to both the internal effects of proposed changes and the external support that is required to realize them. Staff are important to both aspects.

Internal effects might include adjustments of workload from one agency to another; a change in the daily working relationship of agencies with each other; a shift of responsibility (and therefore, perhaps, of personnel) from one part of an agency to another; or the demand for case information at a new point in the process.

The need for external activities is often easier to anticipate. These include building the necessary public or key constituency support, finding new or reallocated funds or facilities, and making sure that critical questions have been answered before proceeding.

### ***Approaches to Staffing the Policy Group***

As the preceding description of tasks should make clear, the persons who staff the policy group should themselves hold positions of considerable responsibility. There are several approaches to providing this needed staff support:

#### ***The Work Group Approach***

The work group approach brings together a senior staff person (a deputy director, chief deputy, or director of planning) from each agency represented on the policy group. Planning is done collectively, with specific tasks divided among the individuals. Because these are people with authority in their own right, they may be able to make decisions on behalf of their agencies and move the process along significantly between policy group meetings.

There are several advantages to this approach:

- Each member of the work group can call on staff in his or her home agency to share the work, whether it involves doing clerical tasks, setting up a meeting, or preparing data presentations;
- A senior staff person brings to the table extensive knowledge about the operations of his or her agency and a keen sense of the likely positions, concerns, and issues of the policy-maker(s) he or she represents; and
- Through the participation of their high-level staff in the give-and-take of such a work group, policymakers and the agencies they head are educated about both the system and the intermediate sanctions process.

There may also be disadvantages:

- Accountability for completing tasks may be too diffuse; and

**Exhibit 4-1**

**Thoughts on Planning Key Meetings**

1. In establishing the goals for a key meeting, consider the following questions: What are the purposes of the meeting? What are you hoping to achieve in relation to the content and the process of the meeting?
  - *Content goals*—What do you think is important for people to know, be exposed to, have discussed by the end of the meeting? How much do people already know about criminal justice issues in general, intermediate sanctions in particular, their intermediate sanctions team, and/or each other?
  - *Process goals*—What messages and behaviors concerning the way (norms, structures) this group will/should operate do you want to establish or reinforce?
2. Who needs to establish themselves in what roles (for example, leaders, antagonists, supporters)? How might that play out in the meeting?
3. What are people's hidden agendas, if any, and how should they be handled?
4. Who has worked together before and in what capacities? What are the interrelationships? Who is on the "inside" versus the "outside" and how should those gaps be bridged?
5. How do the meeting goals fit into the longer term goals of the Intermediate Sanctions Team?
6. In planning the agenda for a key meeting, consider the following:
  - *Chronology of events*—Is there a logical progression of activities? For example, do you move from general to specific or vice versa or go back and forth? Do transitions from one agenda component to another seem smooth? Are the activities consistent with the process development of the group? For example: activities that generate heavy conflict or personal vulnerability should happen after group members have established some trust with each other.
  - Is there a *balance* between lecture and presentations, participatory activities and intellectual theory, emotional and self-disclosing discussions? In thinking about balance, be careful not to overload people with statistics and research results. Also, consider how you will present materials—verbally, on newsprint, or on handouts that can be read later.
  - *Timing*—A group's energy is generally highest in the morning, fades dramatically after lunch, and rises somewhat in the mid-afternoon. Long presentations are deadly after lunch, so plan agenda activities in which people can participate without having too many demands placed on them for this time slot.
  - *Roles*—Clarify who is responsible for what and be upfront with the group. Discuss transitions and time frames. If there are several people taking responsibility for segments of the agenda, identify the overall facilitation so there is some continuity. Don't give people token co-responsibility.
  - *Establish clear next steps*—Be as specific as possible about what happens between meetings—state names, dates, and tasks—and, when possible, identify the next meeting date.
  - *Expectations and evaluation*—Give people time to express their concern/pleasure with the agenda so they will buy into it, and give them an opportunity to evaluate it during the course of the meeting as well as at the end. They may well provide the input that you need to quickly revamp the agenda to meet people's needs better.
7. Consider whether the agenda accomplishes your meeting goals.
  - Is the agenda realistic in terms of time? (Everything takes longer than you expect it to.)
8. Will the physical space and environment accommodate your goals and agenda? For example: Is the setting formal or informal? Is there enough space to break into smaller groups? Is there wall space for hanging up newsprint? Can the tables and chairs be moved to meet your needs?

- There may be a tendency for the work group to make decisions or explore issues independently without sufficiently involving the policy group.

#### *The Coordinating Council Approach*

Many jurisdictions around the country have a criminal justice coordinating council or planning commission whose mission encompasses systemwide planning. These bodies typically include many of the same policymakers who serve on the intermediate sanctions policy group. One way to secure staff for the intermediate sanctions process is to give the responsibility to the staff of this council.

The advantages of using staff of the coordinating council include the following:

- These staff persons are probably already knowledgeable about the criminal justice system and how it operates;
- They are familiar with the key actors in the system and their particular concerns and interests;
- They are more likely to be perceived as neutral and helpful to the process than are staff employed by one or more separate agencies; and
- They are probably well acquainted with the capabilities and limitations of the jurisdiction's information system(s).

This kind of effort is the very reason such councils were created, so their staff are in some ways ideal to undertake this work.

The following are possible concerns about such an arrangement:

- If the process did not originate within the council, the staff might resent an additional set of duties added to their regular ones; and
- This staff may be accustomed to a certain set of dynamics among the policymakers; because they cannot believe that these can be changed, they may be unwilling to try new approaches.

#### *The Lead Agency Approach*

When the idea for and leadership of the intermediate sanctions process originates in one agency, it is often expedient for the staffing to come from that organization as well. In our experience, however, this is the least desirable arrangement.

There certainly are benefits:

- With the clear commitment of the agency and its leadership to the intermediate sanctions effort, the staff resources to get the job done are more likely to be available. Staff who are involved will enjoy support and encouragement from their superiors.
- The risks, however, are considerable:
- Staff from a single agency are far less likely to be trusted quickly or completely by policymakers from other organizations;
  - Other agencies are excused from investing in the effort and therefore from building a sense of common ownership of it;
  - Staff from the lead agency will have to struggle to achieve a system perspective; and
  - There is a good chance that the effort will be dismissed as a single-agency initiative.

Having presented the potential strengths and weakness of various approaches to staffing, we emphasize that no matter where the staff is located, this endeavor will have the best chance of success when the work is being done by individuals with sufficient energy for it and genuine commitment to it.

#### *What the Staff Needs to Get This Work Done*

We have described the kinds of assistance the policy group must have from staff in order to engage the intermediate sanctions process effectively. If it is to provide this assistance, however, that staff will have many needs of its own, especially time and cooperation from agencies and access to the leadership of the policy team.

#### *Time*

Responsibility for this endeavor cannot be sandwiched into or on top of a job that already requires 50 to 60 hours a week. Even if several senior individuals are sharing the responsibilities, their normal work loads must be reduced to make time for this project. (Among other advantages, the work group approach of sharing the tasks will permit the cooperating agencies to adjust their staffs' work loads to accommodate varying time demands on each agency over the course of a year.)

The amount of time required will vary by jurisdiction, depending on its size and complexity (e.g., whether there are both city and county courts, city and county councils), the overall condition of agency budgets, and the history of cooperation among the agencies.

By making the organizational adjustments needed to make this time available to one or more senior staff, the policymakers who head the affected agencies are indicating their own commitment to the process.

#### *Cooperation*

In order to support the intermediate sanctions process, staff might have to be relieved of some of their regular work load. They also must be given the freedom to think beyond the concerns and interests of the agency for which they work and view their responsibility as being to the larger criminal justice system. Such a change in perspective might

---

#### *In the View of One Staff Director:*

*"It's like raising an infant. It requires a great deal of nurturing, planning ahead, and patience. At times, it consumes all of your time and attention. Your normal routine is altered—the responsibility is crushing. In the end, it is extremely rewarding, and you'd do it all over again."*

—Mark Carey, Director of Community Corrections, Dakota County, Minnesota

involve sharing information and resources, or advocating a change in policy or practice that diverges from the agency's traditional position.

#### *Access to Leadership*

No matter how dedicated and brilliant the staff may be, there are limits to what they can do without the participation of the policymakers, particularly the chair of the policy group. Staff must be able to call on that person regularly to consult on work plan progress, to inform him or her of emerging difficulties (the data are not as good as anticipated; the mayor is very unhappy with the last series of recommendations), to review meeting agendas, to go over early results of the data analysis, and so on. This contact can take the form of phone conversations, formal meetings, or lunch or breakfast meetings; the important thing is that access be regular and easily arranged.

If the chair cannot or will not grant staff this kind of access, then the group should consider choosing either a new leader or a different form of leadership, such as cochairs.

#### *The Time of Policymakers*

There is no getting around the fact that the intermediate sanctions process requires time from key policymakers. Senior agency staff's dedication of significant time cannot substitute for time needed from agency heads themselves. The nature of the process does not lend itself to quarterly lunch meetings.

A policy group contemplating this effort can assume that routine business might be accomplished through quarterly (or monthly) lunch meetings, but only if these are accompanied by occasional, more extensive sessions, including full-day or longer retreats. It takes hours of uninterrupted time to explore how the system functions, what is known about

current offender populations and sanctioning options, and where key decision points are. It is at these lengthier meetings that critical disagreements are acknowledged and confronted and compromises are devised to allow the group to move forward.

At least some of these longer sessions should be conducted as retreats, that is, held away from members' offices (and their phones). The setting should convey the expectation that the activity is not to be business as usual.

#### *Other Resources*

Many of the routine expenses that accompany this kind of effort can be covered out of participating agencies' regular operating budgets. These include the costs of secretarial time, postage, printing, and meeting supplies, which are typically small.

However, there are likely to be costs that are harder to cover, including:

- Meals for lengthy meetings and lodging for overnight retreats.
- Fees and expenses for consultants. The group might want consultants for assistance with meeting facilitation, information system review or design, public opinion surveys, design of data-gathering instruments, or other tasks.
- The manual collection of data from hard files or the entering of data into an automated system. Such data may be crucial to building a solid information base on sentencing patterns and the offender population.
- The purchase or design of new software to support a more comprehensive and usable data-gathering system.
- Travel for staff and/or policymakers to programs that interest them or to conferences and professional meetings on related topics.

#### *Where to find these resources*

Resources, whether staff or stamps, are usually the products of determination. The old saw, "Where there's a will, there's a way," comes to mind; the strategies to find the way are as many and varied as the jurisdictions looking to employ them. We offer a few suggestions:

- Look for resources among agencies that are part of or affected by the criminal justice system. For example, the county council may have wonderful meeting space; the county executive, a large postage budget or a typing pool. Probation or community corrections may have vans to provide transportation to a retreat; an offender may be skilled in graphics. Court administration may have an analyst who is a whiz at computer programming or data collection.
- Identify all the reasons why it is in that agency's interest to offer assistance. Offer to share the results of your information gathering and data analysis. Invite the agency to participate in the process.
- Ask a hotel or restaurant to donate all or part of the cost of a meal or meeting as a public relations gesture.
- The best resource of all is probably a local public or private university. Schools have students looking for projects such as data collection or data entry; they have faculty and graduate students looking for research opportunities. Some faculty or administrators may have skills in training or facilitation, public relations expertise, or other useful talents. Universities often have conference facilities available free or at reduced cost to public agencies. Make a connection and explore all of the possibilities.

*Intermediate Sanctions: The Intermediate*

---

**I. The Success of the Intermediate Sanctions Process Requires:**

- the commitment of policymakers to engage in it and to develop and implement the policies that result; and
- the resources to support the activities and tasks that comprise the process.

**II. Necessary Resources Include:**

**A. Staff who can:**

- develop long- and short-term work plans;
- make sure meetings take place when needed;
- devise agenda for those meetings;
- provide follow-up to meetings;
- provide information and conduct research;
- develop proposals for policy group action; and
- produce implementation plans.

**B. Time from policymakers on the group for:**

- regular policy group meetings;
- subcommittee meetings; and
- policy group retreats.

**C. Funds (or in-kind donations) for:**

- routine office expenses—phone, postage, printing, meeting supplies;
- meals and accommodations for lengthy meetings and retreats;
- consultants for a variety of tasks;
- manual data collection or data entry;
- purchase or design of software; and
- travel to conferences, meetings, or site visits.

**III. Sources of Needed Resources:**

**A. Staff can be secured using:**

- a **work group** with staff from the agencies represented on the policy group;
- staff from a **coordinating council** or commission whose responsibilities cover these areas; and/or
- staff from one agency.

**B. In-kind donations might be sought from:**

- participating or supportive agencies (for postage, clerical support, meeting space, and so on);
- hotels and restaurants (for meals and meeting space); and
- universities (for meeting space, faculty to serve as consultants, students to collect data).

### **Establishing and Maintaining the Policy Team**

*Bill Woodward\**

---

**Introduction** The policy group or policy team is central to the intermediate sanctions process. In the previous chapter we examined the kinds of resources that are required for this effort to succeed. This chapter looks in greater depth at the specific techniques, the tasks and the details, that will keep the policy group engaged, committed, and energetic in their work.

Like most of the handbook, this chapter is addressed to the staff director or person who will support the work of the policy group. However, its advice on the composition and inauguration of the policy team and its observations on useful group norms make it critical reading for everyone involved in the leadership of an intermediate sanctions effort.

---

#### **The Need for a Policy Team**

You must inspire the policy team to produce an outcome most people desire. In this case, the outcome desired is intermediate sanctions policy. The questions for those staff who have to inspire the policy team are: How do you form a group? Who should be on it? How big should it be? What should it be doing? and, Why bother?

Let's discuss the last first: Why bother?

- No single individual can develop system policy.
- Without policy, things happen randomly. Policy provides the big picture, the reference points to guide actions.
- Without policy, it is unclear who decides what a particular sanction is supposed to do. Punish? Control? Rehabilitate?
- An intermediate sanction cannot be evaluated unless there is agreement on what it is supposed to do. That is the basis of the evaluation.

- The group is likely to have the power not only to make policy but also to implement the accompanying recommendations for programs, practices, and the appropriate placement of offenders.

The answers to the rest of the questions (such as, How do you form a group? Who should be on it?) make up the rest of this chapter. Collectively, the answers represent one way to put together and maintain an effective policy team.

The chapter is divided into three sections:

- The Principles
- The Startup
- Long-term Maintenance.

The first section, The Principles, describes the ground rules for the planning, startup, and maintenance of a policy group. The sections following, on the startup and the long-term maintenance of a group, elaborate on the principles, describing one approach to implementing them. You may come up with your own approach, adapting the principles to meet your needs in a way that is suitable for your jurisdiction.

#### **The Principles**

- The policy group must represent all major points of view, system actors, and power brokers, for example:
  - Judges
  - Prosecutors
  - Pretrial service providers
  - Defense attorneys
  - Probation and/or community corrections managers
  - Officials from privately run programs or sentencing options
  - Jail administrators
  - Chief law enforcement officers
  - Legislators
  - County commissioners
  - Representatives from the mayor or county executive's office
  - Directors of victim organizations
  - Public representatives.
- Staff and other resources must be available, as discussed in the preceding chapter.
- Staff, whether in-house or contracted, must have research, planning, and facilitation skills.

---

\*As the director of the Criminal Justice Division of the Colorado Department of Public Safety, Bill Woodward has served as a member of and staff to many policy teams of this type. His keen insights into, as he puts it, "the care and feeding" of a group of policymakers who are used to being individually the center of staff's attention are sure to save others from some painful learning experiences.

- The group must use a process of planned change.
- The group must produce products: reports, legislation, policy recommendations, data analysis.
- The group must discuss sentencing philosophies in its deliberations.
- The emotional and physical concerns of members must be acknowledged and managed.
- There must be a balance between staff and policy team members. Neither can dominate; it must be a team effort.
- The policy team must “scan” the environment as well as its own process and work. (See Exercise 5-2 in this chapter for a suggested approach.)
- Members of the policy team who report to another policymaker must have the commitment of that person to work on this problem.
- The policy group should not exceed 25 to 30 members. Use subcommittees to work on difficult or special interest problems.

## ***The Startup***

### ***Preparation***

#### *Identify the Policy Team.*

The first step is to identify the members of the policy team. One approach is to form a startup team of interested policymakers and staff to identify other potential members and a chairperson, if one has not already been appointed.

For the initial planning session, invite interested peers from other agencies or branches of government, if possible. Heterogeneous (multiagency) groups are far more productive for the early planning.

Part of the work in identifying potential policy group members is to determine the extent of political support for this effort. Who will and will not support it, and why? Do a stakeholder Power Analysis or comparable exercise. (See Exercise 5-3 in this chapter for a suggested approach.) This will help to identify who needs to be on the team and who

might be more useful to your efforts as a supportive nonmember; who needs to be kept informed and who will oppose the effort, no matter what. The exercise may also suggest strategies for handling relationships with external groups and agencies and powerful policymakers not on the team. It will certainly begin to frame the job that lies ahead.

The main criteria in choosing members are, first, their power and influence with their peers and the larger community; and second, their openness to ideas and new ways of looking at old problems. Selecting individuals on the basis of ideology alone typically is not a good criterion.

In identifying a chair, look for these same strengths, combined with broad respect among other policymakers and a cooperative leadership style.

Staff should attend startup meetings.

#### *Identify a Staff.*

The ideal staff will include a full-time director, a full-time researcher, and at least a half-time clerical position. Justice cannot be done to this process without such staffing. (Chapter 4, Essential Ingredients for Success, suggests possible sources for this kind of staff support.)

#### *Contact Each Potential Member.*

Do this yourself if possible. Describe the policy process. Identify other members being considered. Ask about their interest in serving.

If the person is a likely member of the policy group, conduct a full interview. This is important for two reasons: First, you want to know as much as possible about this person either before he or she is appointed or, at the very least, before the group meets. The more information available about who the group really is, the greater the chances of success. Second, the responses to the questions become the focus of your first team-building session once the group starts to meet: Staff presents to the policy team the range of responses to the first eight ques-

tions listed below. This should produce a good discussion about the direction of the effort, possible outcomes, likely pitfalls, and opportunities.

Questions to ask include:

1. What interests you about this project?
2. What are your hopes for this project?
3. What are your fears for this project? (If members seem unaware of the risks they are taking in joining the team, be sure to point them out.)
4. What are reasonable goals for the first year of the project?
5. What do you expect the staff to do?
6. Does the group appear balanced to you? How would you change it?
7. Should we be doing this? Why?
8. What meeting dates/times are best for your schedule?
9. Is there anyone in this group with whom you cannot work?
10. (If applicable) To what extent do you have the support of your superior for your work in this area?

If the group is not appointed yet, add these questions:

11. Do you want to be considered for this group?
12. Are there others who should be contacted to be in this group?

#### *Prepare the Members of the Group.*

Provide prospective members with materials and a reading list. Provide easy access to the staff.

#### *Get Them Appointed Officially.*

One way to gain the commitment of group members is to create an important public context for their work. Once the composition of the group has been agreed on, have the members appointed officially. The more “official” the group, the greater its legitimacy and authority. Go to the highest leadership in the jurisdiction for the appointments (county commissioners, governor, city council, mayor, state legislative leadership, or the presiding judge).

Have certificates of appointment printed and arrange for press coverage and photographs.

## **First Steps**

### *Scan the Environment.*

Before the group begins work on the foundation of its efforts (the mission, goals, and objectives), it must understand the environment in which it works.

Everyone knows about the environment from his or her own perspective; an organized process of scanning the environment, conducted as a group task or exercise, is a method for compiling all of the individual perspectives of the policy group members into a total picture. (See Exercise 5-2 in this chapter for one suggested way to do this.)

### *Agree on a Mission Statement, Goals, and Objectives.*

**The mission statement** must stir the imagination and focus the team's resources. It should be proactive; a reactive mission will hold back the team. There must be some risk in the mission. Without risk, everyone plays it safe, and little is accomplished.

**Goals** are the specific "end events" at which you wish to arrive. A goal is focused on addressing specific problems before they get too big. Goals may break down large problems into a series of manageable ones.

**Objectives** are the measures used to ensure that you reach each goal. Objectives should be stated in measurable terms.

### *Operate by Consensus.*

Consensus is not compromise, nor abdication, nor winning so that others lose. Rather, consensus is an agreement with others that may not be an ideal solution, but is a result that all can "live with."

### *Agree on Rules for the Group and Keep Them Simple.*

- One person speaks at a time.
- No side conversations.
- No cheap shots.
- No war stories.
- Work for consensus.
- Parochial interests are left at home.

Get consensus on these rules—your first consensus!

### *Agree on the Role of Staff.*

Many things influence the role staff will play with a policy group. The seniority of the staff, their "home" agency (see Chapter 4, Essential Ingredients for Success, for different approaches to staffing), the skills and style of the chair, and the dynamics within the group are just a few of the likely factors.

Staff may serve as full members of the group—participating in all discussions, voicing opinions, agreeing to consensus decisions. Or staff may be valuable resource people who offer knowledge when asked but whose primary responsibilities lie in the preparation for meetings, not in participation. There are, of course, all manner of variations and combinations of these two basic models.

Another basic issue in this area is the relationship that staff will have with individual members of the policy team. For example, are staff available to do research or prepare materials at the request of members?

In some groups, staff also serve as facilitators of meetings and discussions.

## **Doing Business**

### *Facilitate Meetings.*

A facilitator, as the term indicates, helps a group to have a smoother and more productive meeting. It is a critical role within a group and ought not to be left to the chair.

The staff director should get formal training as a facilitator if at all possible. Until then, he or she should follow these rules:

1. Make clear that you cannot take sides, and invite the group to let you know any time they believe that you are taking sides. This does not mean that you cannot advocate a point of view from time to time, as long as you note that it is your personal opinion or you have the data to support your idea.
2. After a series of exchanges on an issue among team members, summarize what you have heard to the satisfaction of those who had the discussion. This neutral summary is especially important when issues become emotional.
3. When members start repeating themselves, actively listen to their statements. That is, paraphrase their statements to their satisfaction.
4. Use a flipchart to record key points during a discussion. This helps to keep the discussion focused and remind participants of ground that has already been covered. A second flipchart can be useful for noting other things that come up during discussion: tasks to be done, questions to be examined or researched, or points of agreement.
5. Record what is said **verbatim** on flipcharts. Do not interpret what you hear.
6. Avoid surprises. Learn to anticipate what people will say and do in a meeting by getting to know every member of the group. You do not know your group until you can pretty much predict what will happen in a policy group meeting.
7. Notice emotions. They give you a clue to where the energy of the group resides. Follow this tension thread, as it usually leads to people's anxiety about some risk they are taking. Help them find a way to reduce this risk.

### *Create Opportunities for Social Interaction.*

The ideal for any group engaged in this type of effort is that members will develop loyalty to the group, respect and listen to each other, and trust one another enough to take risks together. The staff must provide them with the occasions to build those relationships.

Whenever possible, schedule meetings around mealtime. If resources do not permit a meal, encourage members to “brown bag” it: They bring in the food, the staff offers drinks and maybe a dessert. This builds in time—even if it is short—for chatting and sharing. Organize cocktails, soft drinks, and snacks after a late day meeting.

To accommodate the group’s need for extended periods of discussion, schedule some meetings in a retreat-like setting, away from offices and phones. Be sure that some social activities are included in these retreat sessions: a cocktail hour, a picnic lunch, or a barbecue dinner—any event that allows people to interact in an informal way beyond their usual patterns.

### *One Policy Group’s Experience:*

*“It took us two meetings to get together as a group. Nonsymposium participants had to catch up both informationally and socially. We struggled with a work plan outline. It appeared that we needed to know where we were headed and be confident that the work plan would get us there. Intermingling long-term rewards (e.g., developing a policy framework) with short-term outcomes (e.g., problem identification) proved to be important in keeping people’s energy and momentum. In retrospect, the process of struggling was far more important than what we were struggling with. Increased ownership, interest, and commitment to work on system problems have resulted.”*

—Mark Carey, Director of Community Corrections, Dakota County, Minnesota; excerpt from the *Intermediate Sanctions Project Newsletter*

### *Collect and Analyze Data.*

You cannot resolve many of the issues to be confronted by the policy group without some original research. Use a subcommittee of the policy group to help frame the questions and advise on the methodology.

### *Understand and Use a Planned-Change Process.*

You will need a deliberate strategy for using data and analysis to accomplish the goals of the policy group. You will work more efficiently if you follow a planned-change process. Here are the essentials:

1. Describe the problem. This is best done in terms of a gap between what is desired (as portrayed in the mission statement and goals) and what currently exists.
2. Decide on the criteria that will guide the assessment and choice of options to solve the problem and meet the goal.
3. Brainstorm policy options (offering no criticism) and select the best 20 percent for further study.
4. Apply the criteria to the options and select the best.
5. Implement the options selected.
6. Monitor the outcome.
7. Redefine the problem.

### *Build in Some Accomplishments Early in the Process.*

As you begin the tasks of the intermediate sanctions process, look for places where the group can identify problems and work on some immediate solutions. During the system-mapping work, for example, the group may come upon glitches, holdups, or gaps in case processing that affect other parts of the system. Let the group work on those glitches if it is so inclined. So much of the early part of the process is education and conversation; the group typically needs some concrete tasks to keep its energy level high.

### *Write Reports.*

Both the process and the products of the group must be documented. Staff could be responsible for tracking progress through regular minutes of the group. Other products, such as draft legislation and policy or issue papers, may be produced either by staff or by policy team members. These reports should include an executive summary.

### *Supervise the Work.*

Staff must have regular access to the chair of the policy group to assess the progress and direction of the work to be done.

### **Long-term Maintenance**

#### *Institutionalize the group.*

If the policy group and the intermediate sanctions effort are effective, it may make sense to secure the group’s status by making it a permanent, funded body within an established agency or larger body.

Making the team a part of a larger established body may be necessary for other reasons. It may be the only way to access staff support or other resources. Being formally designated as a committee or task force of an existing group may confer needed legitimacy or reduce potential conflict with other policymakers. Keeping major coordination efforts housed in the same agency has the added benefit of ensuring that they share direction and that their work is complementary.

#### *Build meeting agendas.*

Use all suggestions and comments from meetings and discussions to drive the agenda for the next meeting. The chair and staff should discuss the order of the agenda and the work to be done for each item.

Be sure to articulate how each item on the proposed agenda relates to the group's mission, goals, or objectives.

#### ***Address turnover in the team's membership.***

The chair of the team should be ready to suggest replacements to the policy group whenever a team member leaves. It is important to get new members appointed as quickly as possible. The chair, other members, and staff should spend as much time as necessary with replacements to bring them up to speed and help them establish rapport with the rest of the group.

#### ***Maintain legitimacy in the criminal justice community.***

If legitimacy is lost, the group must find out why and develop a list of options for restoring it. Losing legitimacy with any major group or person in the criminal justice community may not seem important at the time, but, if this occurs, the policy group can be severely undermined.

#### ***Repeat earlier activities.***

To ensure that the group continues to work well, repeat some of the activities from early in the group's development:

- Review the group's mission, goals, and objectives.***

At least once a year, group members should prioritize their goals and objectives for the group on an individual, private basis. On the basis of these individual exercises, the group should discuss such issues as: Should we change what we are doing? How well have we done what we wanted to do? Do we have the resources to do what we are doing now? If we want to do more, where will we get the resources?

- Repeat the individual interviews with group members at least annually.***

These interviews may reveal problems that lie beneath the surface. Use the list

of questions from the first year, adding questions that seem appropriate to what the group is engaged in at the time.

- Repeat the team-building exercise.***

Use the interview results in the same way. This can function as a group "checkup" or report card to itself.

- Redo the environmental scan at least annually.***

#### ***Remain alert to conflicts and misunderstandings within the group.***

Groups experience predictable issues and stages. Some basic group theory follows:

Groups generally develop well and do good work after they have worked out three major issues:

*Inclusion.* Who is included? Who is excluded? Who wants to be included who is not now being included? (Clue: "I wasn't at that meeting!")

*Control.* Who is in control? Who wants to be controlled? Who wants to control? (Clue: "Why wasn't I asked about that?")

*Liking.* Who likes whom? (Clue: "I thought we were friends!")

Groups normally progress through four stages, which are similar to those of a child growing to adulthood. Expect each of these stages to occur in any group process. If they do not, talk to people about why they think they are not occurring. It may be that you have simply missed them. If this is not the case, determine what needs to be done to help the group grow. The four stages are:

*Forming.* This is the infancy of the group. Confusion and anxiety abound as different styles and needs become evident. Depending on tolerance for ambiguity, this first stage may be pleasant and smooth or intense and frustrating.

*Storming.* This is adolescence.

Regardless of how clear the task or the structure of the group, group members will generally attack leadership, either directly or through acts of nonsupport. To get past this stage, members must stop reacting and start initiating, taking risks of their own for the good of the group as a whole.

*Norming and Performing.* This is adulthood. The group pulls together into a coherent whole, not simply a collection of individuals. Now the group is ready to work toward its goals. Solving a problem or reaching consensus provides a powerful motivator to continue to work together.

*Transforming.* When the purpose of the group has been achieved, it is time either for transformation into a new structure or for the group to disband. Failure of the group to recognize that the life of the current group has come to an end will lead to a hollow, unfinished feeling.

#### ***Produce regular reports.***

Regular papers, legislation, and reports must be a product of the policy group. Each document must be thoroughly reviewed and approved by the policy group. Minority reports may be useful if consensus is not possible.

#### ***Conclusion***

One of the most difficult aspects of developing a principled approach to intermediate sanctions policy is that there is typically no forum for addressing sentencing issues on a systemwide basis. The formation of a policy group as described in this chapter provides such a forum, as well as a vehicle for change. As such, it is one of the most critical elements in developing intermediate sanctions policy. It is hoped that the information, suggestions, and exercises provided in this chapter will be of assistance as individual jurisdictions face the challenge of developing and using intermediate sanctions.

---

### **Exercise 5-1**

#### **Developing a Potential Profile**

---

Staff posts around the meeting room a single sheet of newsprint for each of the first eight questions listed under the subheading of this chapter, "Contact each potential member." Each sheet lists all of the responses to that question from the members of the group (unattributed, of course). You are providing the group with its first "picture" of itself.

Use each set of responses for the discussion of a particular topic. For example, discuss the list of "hopes for this project" as the basis of a mission statement. The list of fears becomes the set of risks that the group collectively faces. How might the project ameliorate those risks in the way that it conducts its business?

Begin discussion of each topic with a request for additions. Consider the individual items. Note those that are common to most or all respondents. Is there general agreement, items that need to be added, or are you identifying areas that will need further work to achieve consensus?

At the end of this exercise you should have a rough outline of the mission statement and goals, some operating procedures and norms around the conduct of business and the role of staff, and the beginning of a work plan.

After the meeting, send these products, in rough outline and in a more polished form, to all team members for their response.

---

## **Exercise 5-2**

### **Conducting an Environmental Scan**

The purpose of an environmental scan is to be sure that the policy team does not overlook major issues of influence as it sets about its work. The compilation of all of the team members' perspectives creates a rich and detailed picture of the environment under which the team is operating.

The environmental scan seeks the major "ideas in good currency" that dominate criminal justice policy. Ideas in good currency are those concepts or ideas that influence current philosophy, practice, and resource allocation. Examples include the interest in science and math after *Sputnik* in the late 1950s; civil rights in the 1960s; energy in the 1970s; and reduced regulation in the 1980s.

Although there are both major and minor ideas in good currency, there are generally only 10 to 12 major ideas at any given time. However, there can be several minor ideas in good currency within each major one. When energy conservation was big in the late 1970s, there were a lot of minor ideas in good currency, such as windmills, solar collectors, chemical storage of energy, and oil shale.

Ideas in good currency are generally classified as latent, current, peaked, or institutionalized.

- **Latent** ideas are just beginning to be noticed and have not yet started to drive resources.
- **Current** ideas are those that are currently driving resources.
- **Peaked** ideas are those that probably will not be the cause of any incremental increases in resources.
- **Institutionalized** ideas are those that have stabilized with a given resource base.

To conduct your own environmental scan:

1. First, brainstorm those ideas in good currency that relate to the criminal justice system and that may have an impact on what you are doing.
2. Next, select 10 to 12 items on the list to represent your list of major ideas in good currency. Consider the remainder of your list as minor ideas in good currency, and find places for them under the list of major ideas.
3. Review the list of major ideas and identify each as a latent, current, peaked, or institutionalized idea.
4. Finally, prioritize the major ideas. Using this priority listing, select those ideas that the team wants to incorporate into its plan for action.

## **Exercise 5-3**

### *Completing Step 3: Preparing Your Analysis*

1. The team begins by brainstorming a list of all those people who the team members anticipate will either support or oppose its work. The list should encompass specific individuals as well as groups. Some people may be listed both individually and as a member of a group, in those cases in which the individual also acts outside the context of their group. (Keep in mind the ground rules: No negative comments while the names go up on the list!)
2. Next, consolidate the list by coming to a consensus on the top 20 percent—those with the most influence on your work. Review this list and select an appropriate number of people to serve on your policy board. You can end the power analysis here if you choose. But to more clearly understand why you may want certain people on the board, continue on with the next step.
3. Arrange all of the names on your original list on a chart like the one below. It is recommended that this be done using a flipchart or a large white board.

Names	Power (0–3)	Saliency (0–3)	Position (-3 to +3)	Total*
Joan L.	3	1	-3	-9*
Defense Attorneys	1	3	2	6*
Jose H.	0	3	3	0*
Etc.				
Total Score	*****	*****	*****	-3*

\* The total is calculated by multiplying across the columns.

### **Calculating the Power Analysis Scores**

Determine the power score, saliency score, position score, and total score for each person or group listed.

The **power score** is arrived at by determining the group consensus about how powerful this person is, without regard to his or her position on your work. Both formal and informal power should be taken into consideration.

The **saliency score** is arrived at by determining the group consensus on the relative importance of this project in relation to the person's other work. This helps you gauge whether the person is too busy with other things to be of much help or hindrance to your efforts.

The **position score** reflects the group's assessment of the person's position on intermediate sanctions (i.e., strongly in favor [+3], strongly opposed [-3]).

### **Interpreting the Power Analysis Scores**

To calculate total scores, multiply the power score by the saliency score by the position score. A "0" score in any box results in a total score of "0." These individuals probably should not be considered for membership on the policy group.

Those with high negative scores (-18 and above) must be considered for membership on the policy team. It is risky not to include these people on the team; if you do not include them, you must consider including either someone with significant influence over the person or group or someone who can beat them in a fight.

Those with high positive scores (+18 and above) should also be considered for membership on the policy team.

Those with average scores (either positive or negative scores in the 8–12 range) should be considered as well, but a different strategy should be considered for each. Use the participation on the team of those with average negative scores to educate them. Including people with an average positive score will offer you the opportunity to strengthen their overall score by increasing their saliency score (i.e., you can get them excited about the project).

If your power analysis results in an overall negative total score, you can be confident that you will have a lot of work to do on marketing your project. Use the individual scores as a guide to direct your efforts. On the other hand, an overall positive total score on the power analysis tells you that the team is starting off with a lead. Be careful to keep that lead and not lose ground as you proceed!

### Defining a Continuum of Sanctions: Some Research and Policy Development Implications

Alan T. Harland\*

**Introduction** The issues, concepts, and analyses described in this handbook are, with one exception, neither new nor unique. They are, rather, presented together as a process in a way that we hope is new and more helpful.

The exception is this chapter. The concept of a continuum of sanctions has, until now, been explored in only a limited fashion. Jurisdictions and agencies have experimented with the notion of continuums of punitiveness, of control, or of services. In this project, we have tried to explore the notion of a continuum of sanctions that is multidimensional, that captures the intensity as well as the purpose of sanctions, and that addresses the multiplicity of purposes that any range of intermediate sanctions embodies.

In this chapter, Alan Harland has taken those discussions and explorations to develop a cogent new way to understand the whole concept of intermediate sanctions.

#### **Pressure to Expand the Range of Intermediate Sanctions**

In an era in which alarm over public safety and the fiscal constraints upon government's capacity to respond both seem to be worsening, the criminal justice system's heavy reliance on the polar extremes of routine probation and traditional forms of incarceration has come under extensive scrutiny and criticism. Fears about inadequate control and punishment of high-risk probationers on the one hand and concern about the ineffectiveness, unconstitutional crowding, and soaring construction and maintenance costs of penal institutions on the other have prompted widespread calls for more extensive development and use of mid-range, "intermediate" sanctions. This is usually understood to mean doing something between sentencing or revoking offenders to prison or jail and releasing them into the community under negligible probationary constraints.

Advocacy for expanding the range of intermediate sanctions has emerged from a broad alliance of critics from all shades of the professional, political, and academic spectrum. It has been met by rapid proliferation of a "new generation of alternatives," such as boot camps, day treatment and day-reporting centers,

---

*Increasing the range of choices expands the prospect of improving sanctioning practices, but it also makes the task of deciding on the "right" response to criminal conduct an even more complex and challenging proposition than in the past.*

---

intensive supervision probation and parole programs, day fines, and home arrest/electronic monitoring, as well as by expansion and consolidation of earlier approaches, such as community service, restitution, and traditional therapeutic and other treatment interventions.

#### **Need for Structured Expansion**

Although expanding options is a vital first step toward the rational assessment and allocation of sanctions, a central premise of much recent discussion is that

expansion alone is not enough, and, indeed, that it may ultimately be counterproductive for jurisdictions simply to generate a multitude of sentencing and revocation options. Attention is increasingly being drawn to the danger that, without clear guidance to structure discretion as to how and for whom the variety of sanctions might best be applied, such expansion may make the decisionmaker's task even more difficult and confusing, leaving greater chance for idiosyncratic and otherwise inappropriate results.

Increasing the range of choices expands the prospect of improving sanctioning practices, but it also makes the task of deciding on the "right" response to criminal conduct an even more complex and challenging proposition than in the past.

Expansion of options without clear definition and a corresponding set of principles and standards to guide in their selection, application, and evaluation raises the threat of faddish adoption and

---

\*Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

Alan Harland is Associate Professor of Criminal Justice at Temple University in Philadelphia, Pennsylvania. In addition to his teaching, research, and writing, he is actively involved in the field, providing technical assistance and training to probation and other criminal justice agencies and organizations around the country.

unstructured discretionary use (and abuse) of intermediate sanctions. This, in turn, escalates the risk of applying the sanctions to inappropriate target populations and the corollary dangers of weakening their public safety impact and threatening their integrity and credibility through net-widening, cost overruns, breaches of desert principles, inequity, and undue disparity. These dangers are of more concern, as the types of intermediate sanctions being introduced become more and more onerous in striving to approximate the punitiveness and control associated with the terms of incarceration with which they are being designed to compete.

The challenge, therefore, is not simply to meet a need for more sanctioning options, but to develop options that will have clear relevance and credibility in the eyes of the practitioners and policymakers on whose understanding and support their long-term survival and success depend. This suggests a need to expand options in a comprehensive, principled, and highly goal-centered way, being wary of repeating the frustrations and failures so widely documented in earlier alternatives efforts. This requires an awareness and high level of systematic attention to well-conceived and articulated development, implementation, monitoring, and evaluation strategies. In short, we must approach the task as an information-driven process of planned change, rather than the crisis-oriented, bandage fashion in which sanctioning options have so often and so unsuccessfully been introduced in the past.

#### ***Emergence of the Concept of a Continuum of Sanctions***

Recognition of the potential dangers of haphazard development and use of an increasingly diverse array of intermediate sanctions has led to calls for development efforts that go beyond simply creating more options. Emphasis is placed instead upon the far more complex undertaking of establishing a **continuum of sanctions**. The importance of considering sentencing and revocation decisions in

terms of a continuum of choices is a theme that has been emphasized recently in both the professional and academic literature on sentencing and intermediate sanctions, and it has attracted the highest levels of political attention. As is the case with so many other popular concepts in the criminal justice business, the ease with which an idea slips into common parlance bears no relation to a consensus on its essential meaning and significance. The expression “continuum of sanctions” is no exception: it is frequently used and misunderstood to mean simply a list or

*The challenge, therefore, is not simply to meet a need for more sanctioning options, but to develop options that will have clear relevance and credibility in the eyes of the practitioners and policymakers on whose understanding and support their long-term survival and success depend. This suggests a need to expand options in a comprehensive, principled, and highly goal-centered way, being wary of repeating the frustrations and failures so widely documented in earlier alternatives efforts.*

menu of criminal penalties or, more typically, correctional programs, such as the boot camps and others already mentioned.

The balance of this discussion will be concerned with the important difference between developing a wide-ranging **list or menu** of options and the far more difficult but potentially more vital task of constructing and applying a **continuum of sanctions**. More specifically, the focus here will be on what the idea of a continuum of sanctions means, and why the concept is potentially important and helpful to those interested in improving sentencing and correctional policy and practice, especially to those faced with difficult choices about recommending or imposing sanctions in an individual case or adopting or implementing them at a program or policy level.

#### ***Defining Basic Terms***

The dictionary definition of “sanctions” is: “Coercive measures or interventions taken to enforce societal standards.” The dictionary definition of the term “continuum” identifies its basic characteristic as an ordering or grading on the basis of some **fundamental common feature**. Combining the two, the result is as follows:

*“A continuum of sanctions is a variety of coercive measures taken to enforce societal standards, ordered on the basis of a fundamental common feature.”*

An obvious aim behind the grading and scaling of sanctions, implicit in the continuum idea of providing some sense of order or sequence for their use, is to make it easier for judges and others to compare and make more rational decisions about the different options. Clarity on the basis for ordering sanctions will make it more likely that those selected will achieve expected goals and will facilitate decisions about interchangeability or equivalence of intermediate sanctions with terms of incarceration and with each other. Understanding the continuum concept, therefore, suggests the need for clarification in at least three areas.

- First, what is the precise nature and scope of the coercive measures embraced by the term “sanctions”?
- Second, by which essential common features (dimensions) might judges and other key decisionmakers find it most helpful to order the various sanctions on the list?
- Third, what techniques or methods might best be employed to scale and grade sanctions according to each of the dimensions identified?

The first question addresses the range and complexity of sanctioning options available. The other two questions, one conceptual and one methodological, further frame the tasks required to move beyond an undifferentiated list of sanctions to a continuum.

### **Clarifying Items on the Sanctions Menu**

Figure 6-1 summarizes the typical range of coercive measures or intervention possibilities in most jurisdictions and illustrates the sizable number of alternatives that may compete for the decisionmaker's attention in any given case. Fleshed out to reflect the actual legal and practical circumstances of an individual jurisdiction, this kind of list could serve as a checklist in a bench book for judges, for probation presentence investigators preparing recommendations, or for defense-based advocates preparing client-specific sentencing plans. It could also stand as a summary table of contents for the more detailed descriptive accounts of sentencing options that such a reference work would provide.

An essential starting point in the development of a continuum of sanctions and the pursuit of a more rational approach to their use is that the options outlined in Figure 6-1 be defined and understood as thoroughly as possible. This suggests the need for extended discussion among key decisionmakers, aimed at establishing a shared vocabulary and thorough baseline understanding of precisely what options are in use or potentially available and exactly what each one entails. Before it is possible to move from an unstructured array to a more organized continuum of sequenced and scaled alternatives, we must first develop a detailed grasp of what is on the current menu. Judges and legislators are often woefully unfamiliar with the specifics of many of the options available in their own courts and communities. By fully identifying and defining the range of options available to sentencing authorities, judgments can be made about whether and to what extent they are equivalent or interchangeable in any significant way, and how likely they are to satisfy any or all of the major goals of the decisionmakers involved. The definitional task requires recognizing that:

- Intermediate sanctions can be interpreted to include a far broader range of choices than the more narrow term

"intermediate punishments," and the difference is of far more than semantic importance. (For a more detailed discussion of this issue, see *Sanctions vs. Punishments*, following this chapter.)

- Both sanctions and punishments can usefully be distinguished from the programs (e.g., boot camps) of which they are a component and the agencies (e.g., probation) that administer them. (For a more detailed discussion of this issue, see *Programs vs. Their Component Sanctions*, following this chapter.)

### **Moving from a List to a Continuum: Goals of Sanctioning Authorities**

As they are faced with a growing number of choices, the need for clear information and guidance about the precise nature of the various options and the likelihood of their satisfying different sentencing goals becomes an obvious priority for both policy-level and case-level decisionmakers. Clarity of purposes/goals is an obvious precursor to any meaningful assessment, comparison, and evaluation of the strengths and weaknesses of different sanctions. Selection and application of any of the listed options will be driven by a belief that it is reasonably compatible with the decisionmaker's dominant **values and goals**.

Consequently, in addition to being well informed about the operational aspects of sanctions available to them, practitioners and policymakers must also be clear about the essential fears and concerns to which their decisions about sanctioning choices are intended to respond. If one believes, along with Morris and Tonry (Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*, Oxford: Oxford University Press, 1990), that sentences can be devised that are equivalent to imprisonment (or to each other), the question becomes, on what measures of equivalence or interchangeability

might the various sanctioning options best be scaled and graded to help decisionmakers (such as judges) choose rationally among and between them?

Surprisingly little attention has been paid to the issue of scaling criminal penalties in such a way as to aid decisionmakers in judging how well they are likely to work at all and in relation to each other. Recent efforts to respond to the need for guidance with respect to intermediate sanctions have focused heavily on ways to grade them in terms of their weight or value on a scale of **severity** or **onerousness**. Among the most frequently applied attempts along these lines have been the efforts of day fines advocates to assign "units of punishment" to offenses rather than fixing dollar amounts, so that offenders of different financial means would be assessed the same number of punishment units for similar offenses but would satisfy them in terms of their individual payment abilities (each might be required, for example, to pay a day's income for each unit assessed).

Some have challenged the notion that scaling and fixing exchange rates for different sanctions to assure **equality of severity or suffering** is of primary importance. It has been suggested that sanctions might be more usefully and realistically scaled, and equivalencies gauged, in terms of their value (or perceived value) in satisfying broader, more functional system goals, rather than on their ability to satisfy purely retributive demands for assuring that comparable levels of pain be inflicted on offenders committing similar offenses. The decisionmakers instead might call for an ordering that allows ready comparison of the different options in Figure 6-1, not only in terms of how much pain and suffering each represents, but also on the basis of their perceived or demonstrated value as techniques for controlling the rate of crime (value as a general deterrent measure) or recidivism (value as a rehabilitative, incapacitative, or specific deterrent measure).

**Figure 6-1**

**Summary Listing of Coercive Measures and Sanctioning Options**

<b>Warning Measures</b> [Notice of consequences of subsequent wrongdoing]	Admonishment/cautioning [administrative; judicial] Suspended execution or imposition of sentence	
<b>Injunctive Measures</b> [Banning legal conduct]	Travel [e.g., from jurisdiction; to specific criminogenic spots] Association [e.g., with other offenders] Driving Possession of weapons Use of alcohol Professional activity [e.g., disbarment]	
<b>Economic Measures</b>	Restitution Costs Fees Forfeitures Support payments Fines [standard; day fines]	
<b>Work-related Measures</b>	Community service [individual placement; work crew] Paid employment requirements	
<b>Education-related Measures</b>	Academic [e.g., basic literacy, GED] Vocational training Life skills training	
<b>Physical and Mental Health Treatment Measures</b>	Psychological/psychiatric Chemical [e.g., methadone; psychoactive drugs] Surgical [e.g., acupuncture drug treatment]	
<b>Physical Confinement Measures</b>	Partial or intermittent confinement	Home curfew Day treatment center Halfway house Restitution center Weekend detention facility/jail Outpatient treatment facility [e.g., drug/mental health]
	Full/continuous confinement	Full home/house arrest Mental hospital Other residential treatment facility [e.g., drug/alcohol] Boot camp Detention facility Jail Prison
<b>Monitoring/ Compliance Measures</b> [May be attached to all other sanctions]	Required of the offender	Mail reporting Electronic monitoring [telephone check-in; active electronic monitoring device] Face-to-face reporting Urine analysis [random; routine]
	Required of the monitoring agent	Criminal records checks Sentence compliance checks [e.g., on payment of monetary sanctions; attendance/performance at treatment, work, or educational sites] Third-party checks [family, employer, surety, service/treatment provider; via mail, telephone, in person] Direct surveillance/observation [random/routine visits and possibly search; at home, work, institution, or elsewhere] Electronic monitoring [regular phone checks and/or passive monitoring device—currently used with home curfew or house arrest, but could track movement more widely as technology develops]

In addition to traditional **retributive** and utilitarian **preventive** aims, scaling and comparison could also proceed along a **restorative** dimension, based on the value of different sanctions in terms of their ability to address goals such as **reparation** to the victim, community, or society. The term “**accountability**”—in the sense of holding offenders accountable for their crimes—is also used widely, especially in juvenile justice restitution circles, as if it were an independent goal of criminal sanctions. In my view, this term is often only a code word for retribution or a rephrasing of the desire to make offenders “pay” for their crimes, which can mean either pay in the sense of suffer (retribution) or pay in the sense of compensate (reparation). In either case, conceptual clarity and intellectual integrity are better served by using the more specific underlying terms.

As well as comparing sanctions in terms of their value in satisfying the primary goals of sentencing (restorative, preventive, and retributive), other dimensions of a continuum of sanctions might involve scaling and grading in terms of various limiting principles or goals at sentencing. At the program or policy level, for example, decisionmakers from budget and oversight agencies may want to see sanctions graded and assessed according to the **economic costs** that each represents. A further possibility is to grade them in terms of their political implications, including their value on a scale of **public satisfaction** or approval by different criminal justice professionals, victims groups, or other important constituencies.

In sum, the various intervention options might be scaled according to their relative value in relation to a number of important goals of sanctioning authorities. A simplified graphic illustration of the type of decision tool to which such an undertaking might lead is presented in

Figure 6-2. Collectively, the resulting ratings would inform judges and other decisionmakers involved in the sanctioning process as to how well each option is considered to “fit” or to “work” on the different dimensions or measures of effectiveness, efficiency, and fairness represented by the goals being measured. Assuming that a decisionmaking tool of this general nature would be of assistance to guide and structure discretion in the comparison and use of criminal sanctions, it remains to be considered how feasible it would be to construct.

---

*As well as comparing sanctions in terms of their value in satisfying the primary goals of sentencing (restorative, preventive, and retributive), other dimensions of a continuum of sanctions might involve scaling and grading in terms of various limiting principles or goals at sentencing.*

---

### **The Mechanics of Scaling and Grading Sanctions**

Methodological and statistical techniques have been developed for classifying and multidimensional scaling in fields as far removed from criminal justice as numerical taxonomy in biology and zoology. These techniques have been applied by economists and marketing researchers investigating consumer reaction to a wide variety of product classes. They have also been used in criminal justice, although the emphasis has been on attempts to bring numerical precision to assessments of crime seriousness. Efforts to create “seriousness-index scores” for various

offenses have demonstrated the complexity of the task and the multidimensionality of the concept, varying as it does according to the extent of harm sustained, characteristics of the victim and the offender, and situational factors such as, for example, whether a burglary was committed by day or night, in occupied or empty premises, by an armed or unarmed person, and so on.

The problem of fixing units of value to different sanctions, whether in terms of severity or some other scale, is no less challenging an undertaking than grading the seriousness of offenses. Opinions and facts about the relative merit, equivalence, or interchangeability of different sanctions on almost any of the dimensions in Figure 6-2 will likely vary depending upon the rater’s understanding of the precise nature (**quality of the sanction**) and the duration and intensity (**quantity of sanction**) of the options under consideration. Raters may also be influenced by different **aspects of the case** as a whole, including judgments about degrees of **culpability** and the probability (**risk**) and consequences (**stakes**) of subsequent offending, as indicated by the **characteristics of the offense and the offender** being targeted to receive the sanction. If we are considering, for example, how many hours of community service work to assign or how high a fine might be in order to be equivalent to six months of incarceration, the answer is likely to be somewhat different depending on whether the time is to be served in an overcrowded, physically inadequate, and understaffed jail or in a state-of-the-art correctional facility. Likewise, the calculation might vary depending upon whether the type of community service to be performed is of the individual placement or the supervised work crew variety, or if the fine is assessed in traditional form or on a day fine basis.

**Figure 6-2**

## Illustration of Scaling Possibilities for Criminal Sanctions: Type of Sanction, by Scaling Dimensions and Units of Measurement

Type of Sanction	Scaling Dimensions						
	Retributive Severity	Crime Reduction <sup>a</sup>	Recidivism Reduction <sup>b</sup>	Reparation	Economic Cost	Public Satisfaction	Etc.
Sanction A	Value in terms of pain and suffering <sup>c</sup>	Value in terms of impact on crime rate	Value in terms of impact on reoffense rate	Value in terms of compensating aggrieved parties <sup>d</sup>	Value in terms of cost efficiency	Value in terms of public approval ratings	
Sanction B							
Sanction C							
Sanction D							
Etc.							Etc.

<sup>a</sup> General deterrence effects

<sup>b</sup> Specific deterrence, incapacitation, rehabilitation effects

<sup>c</sup> Or in terms of units of onerousness, intrusiveness, or deprivation of autonomy/liberty

<sup>d</sup> Direct victims and possibly indirectly affected individuals, groups, or entities [e.g., family members, insurers, taxpayers, community, society]

Finally, assuming numerical scores could be inserted in the cells for every sanction and scaling dimension in Figure 6-2, selection and interchangeability decisions must further be guided by policies and rules determining the relative weight and priority to be given to each dimension when conflicts (e.g., between punishment and treatment) arise. Assuming adequate specification and description of the options, the next question that arises is: given such a range of choices, is there a consistent, principled order or sequence in which the various measures should be factored into the construction of an appropriate sanctioning response? In any given case or class of cases, how does the sanctioning decisionmaker know where to start the selection process, where to stop, and how to resolve conflicts that may arise between competing possibilities on the list? All things being equal, for example, should a comprehensive sanctioning scheme be primarily concerned with compensating victims and other interests of restorative justice or must

those goals be subordinate to the public safety concerns of prevention advocates? Where does either rank in relation to retributive demands that offenders are made to suffer some appropriate degree of pain and suffering for their crimes, regardless of considerations of social utility? And how should costs (direct costs and opportunity costs) and public satisfaction be factored into the final analysis?

### Conclusion

The research and policy development agenda is a substantial one before the notion of a continuum of sanctions can be translated into a practical application for guiding decisions about the development of sanctioning options. The task is essential, however, if we are to reduce a potentially bewildering mass of choices to an organized, meaningful, and readily comparable format within which judges and others can have some clear sense of expected outcomes and of how different intermediate sanctions fit in relation to

imprisonment and to each other. The importance of the task is emphasized by the realization that we are almost completely lacking in information to fill in any of the cells in Figure 6-2 with any degree of confidence. Yet judges and other sanctioning authorities are obviously doing such scaling and grading implicitly, at least on the dimensions they consider salient, when they make sanctioning decisions.

The development of a continuum of sanctions is a conceptually and methodologically complex undertaking. It is an easy expression to use but a difficult one to understand and an even more difficult one to operationalize. Methodologists can supply the skills and tools for the job, but practitioners and policymakers, who are the key decisionmakers in sentencing, must supply the raw materials. They must specify clearly and thoroughly the sanctioning options to be scaled and, most importantly, the dimensions or goals on which the grading and sequencing of sanctions should be based.

## Sanctions vs. Punishments

Alan T. Harland

In their book, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (Norval Morris and Michael Tonry, Oxford: Oxford University Press, 1990), Morris and Tonry ask the question, why “punishments” and not “sanctions”? Skeptics might answer that the former is more politically fashionable, as it appeals to the sound-tough, law-and-order ideology prevailing in much of the U. S. criminal justice establishment today. Former Attorney General Richard Thornburgh, for example, has lamented the gap between simple probation and prison, saying that we need to fill it with “intermediate punishments.” Similar language is found in a recently enacted “Intermediate Punishment” law in Pennsylvania (*Intermediate Punishments Act*, 1991).

Morris and Tonry defend their own preference as almost a question of taste rather than analytic substance, but they offer an analytic defense of their choice. They argue that the use of the term “intermediate punishments” appears to be necessary from a marketing perspective to counter the popular view of prison being punishment and all other responses being alternatives **to** punishment rather than alternative forms **of** it:

One of the reasons why American criminal justice systems have failed to develop a sufficient range of criminal sanctions to apply to convicted offenders is that the dialogue is often cast in the pattern of punishment or not, with prison being punishment and other sanctions being seen as treatment or, in the minds of most, “letting off.” (Morris and Tonry 1990:5).

If it is true, however, that a “punishment or not” mentality has impeded the development of responses to crime between the extremes of prison and probation, there is a danger that continuing to cast the issue exclusively in punishment terms, albeit now as “intermediate punishments or not,” may compound and perpetuate such thinking and resistance to change among policymakers and the public. A recent Justice Department report (*A Survey of Intermediate Sanctions*, Department of Justice, Office of Justice Programs, September 1990, page 3) drew this conclusion in expressing a preference for the term “intermediate sanctions,” because “[o]ne advantage to not using the terminology ‘intermediate punishment’ is that ‘punishment’ is commonly equated with a single rationale for applying criminal sanctions—the rationale of ‘retribution’ or ‘just deserts’—to the neglect of other traditional goals....” The use of this terminology may be especially of concern insofar as it may undermine the legitimacy of responses imposed for treatment and other preventive ends and trivialize the role of conciliatory, compensatory, and other actual or quasi-civil options, such as restitution, forfeiture, costs, and fees in a truly comprehensive sanctioning scheme that candidly includes alternatives to punishment as well as simply different ways of punishing.\*

Morris and Tonry, for example, feel that financial penalties such as those just mentioned “can be disposed of swiftly” as merely “adjuncts to rational sentences, not sentences in themselves; additions to, not substitutes for, other punishments....” As the authors point out, these penalties are

not **punishments** in the sense that they have defined the term. The penalties can, however, be significantly onerous **sanctions** that for some (many?) offenses might be adequate consequences of conviction in their own right, as in the case, for example, of restitution as a sole sanction, a disposition that has received considerable favorable attention in juvenile courts.

In short, the term “sanction” is far broader than punishment. Arguably, it may extend, for example, to include even coercive pretrial measures, such as bail, curfew, and electronic monitoring to prevent flight and/or reoffending prior to case disposition. In contrast, the notion of pretrial punishment is far more clearly untenable, at least in theory. (In fact, the practice of sentencing offenders to “time served” in pretrial detention may be one of the most frequently used intermediate punishments of all.) In addition, the term “sanctions” encompasses a broad range of coercive interventions of a civil, quasi-civil, and criminal nature that can include but need not be limited to the purposeful threat or infliction of painful consequences that is the essential defining element behind retributive and deterrent responses to criminal conduct. As a result, it allows the less ideological decisionmaker far greater creativity and choice than the more limited and emotionally charged term it subsumes.

\*Responding to criminal behavior and its consequences need not, of course, be limited to sanctions. Besides responding with coercive measures, a wide variety of empowering, enabling, facilitative, exhortative, and undoubtedly other ways of dealing with offenders can be imagined.

## Programs vs. Their Component Sanctions

Alan T. Harland

A second way to be clearer about the range of sanctioning options from which decisionmakers might select is to distinguish between individual or specific sanctioning measures and the programs or institutions that exist to administer them (or, more usually, some combination of them). It will be noted, for example, that the sanctions listed in Figure 6-1 do not include the term "probation," nor its equally ambiguous extension "intensive supervision probation," which has become so diverse that it has almost ceased to have useful meaning. All of the options listed in Figure 6-1 may vary in intensity and in the degree to which individuals and agencies from the private or public sector, including probation, are appropriately involved in their implementation and enforcement. Indeed, one of the advantages of the type of sanction/program breakdown in Figure 6-1 is that it allows decisionmakers to consider separately precisely which supervision and enforcement agents (police, probation, parole, private) might be most appropriate (e.g., in terms of professional training, mind set, costs, and so on) for each of the specific sanctions that might be imposed. Enlisting the involvement of community policing units in the task of carrying out intensive surveillance conditions of community release, for example, may make more sense in certain circumstances than leaving it up to probation or parole agents.

From the foregoing perspective, probation is perhaps more meaningfully considered as only one **agency** among several that can be made responsible for the administration of many of the sanctions listed rather than as a sanction itself. Similarly, practices such as "bench," "unsupervised," or "administrative" probation are in most instances tantamount to suspended sentences for offenders who neither merit nor get any meaningful attention by probation officers. As such they undoubtedly contribute to the widespread public and professional image of probation as a slap on the wrist. A better practice might be simply to sentence such cases to the restitution, fines, costs, and other conditions that are often imposed, without the pretense of probation supervision at all. We talk loosely of offenders being "given probation," when what we mean is that they have been sentenced to one or more of the specific sanctions in Figure 6-1, to be enforced under the supervision of the probation department. We do not say that offenders sent to prison or other institutions or programs administered by corrections departments have been "given corrections." It is perhaps this masking of actual sanctions behind the blanket of probation that leads to such widespread public and professional perceptions that probation does not mean anything and that "getting probation" is tantamount to "getting off." Focusing on the specific sanctions may encourage legislators and judges to stop using probation departments unreflectively as dumping grounds for almost every-

one who is not incarcerated. It may also provide some relief to besieged probation administrators, insofar as it allows legitimate criticism of probation as an agency (management weaknesses, staff deficiencies, etc.) to be separated from the more prevalent and unfair attacks that are really criticisms of the sanctions that probation agencies are required to implement and enforce.

In a similar vein, we hear and speak often about the virtues and deficiencies of boot camps, day-treatment centers, community service programs, intensive supervision, and so on as if each one denoted some self-evident and agreed upon identifying characteristic. The reality, of course, is that some boot camps look more like treatment programs than many treatment centers, and any two of the other options listed are likely to be more different than alike from one jurisdiction to another on critical dimensions such as target populations, length of participation, and in the richness and mix of service or surveillance requirements and resources involved. There are a number of options with particular potential for confusion, insofar as their labels appear to suggest reliance upon a unitary or at least relatively singular sanction and program purpose, whereas the reality is that they are much more multifaceted and, therefore, much more difficult to categorize and evaluate. Some community service programs, for example, rely on

individualized assignments, such as working in community hospitals or soup kitchens, in which responsibility for onsite supervision of the offender may be negligible or in the hands of the employer; others involve far more public shaming types of labor, perhaps removing garbage from the highway in the heat of summer or the cold of winter, under the watchful (and expensive) eye of a probation or parole officer, sheriff, or other chain-gang-style supervisor. Obviously, assessments of the cost and punitive or preventive value of such a sanction for various offender groups may differ greatly depending on which type of community service is involved.

Prominent in the more variably defined sanctioning programs are residential restitution centers, house arrest and curfew programs (incarceration at the offender's own expense), electronic monitoring programs, and boot camps, the latest fad in corrections. Restitution centers, such as those in Texas and Oregon, may have the payment of restitution as an important program element, but so do many boot camps, half-way houses, and centers for work-release and day-reporting. Conversely, restitution centers may also share many of the treatment, community service, and fee requirements of the others. Similarly, in what are generically referred to as house arrest or electronic monitoring programs in some jurisdictions, the labels usually greatly belie the diversity of other program elements involved, such as mandatory work, restitution, and treatment

requirements, which make such programs virtually indistinguishable from day-treatment and intensive supervision probation programs in other places, many of which also rely heavily on curfew and electronic monitoring.

Possibly the greatest potential for ambiguity and deceptive labeling among currently popular sanctioning programs (with all the eventual dangers of backlash for long-term survival that false advertising inevitably presents) is in the use of the term "boot camp." On the one hand, it is a political favorite because of the get-tough appeal and punitive aura of military-style boot camps, with rigorous regimes and austere conditions of order and discipline to satisfy retributive emotions and possibly serve as a deterrent. At the same time, more treatment-oriented correctional practitioners and liberal reform proponents find themselves falling in line with the physical-drill and shaved-head routines as a small price perhaps for the phenomenal political appeal and corresponding glut of funding they have engendered. The military-toughness image frees politicians to give the money. The money frees designers and administrators of the actual programs to incorporate a rich assortment of unabashedly rehabilitative resources for which funding might otherwise have been far more difficult if not impossible to secure, such as life-skills improvement, self-esteem enhancement, educational and vocational training, confidence building, nutritional and personal hygiene improvement, and substance abuse treatment.

Identifying and separating relatively **discrete** sanctions, such as a fine, community service, or confinement, from

more amorphous **programs or institutions** such as boot camps or day-treatment centers, does not automatically eliminate confusion or assure a shared understanding of the meaning of the terms being used. Even something as seemingly simple as a fine, for example, is not so straightforward, for purposes of comparison, if one party to the debate is talking about day-fines while the other is thinking about traditional fining practices. The program vs. discrete measure distinction is a worthwhile effort, however, because the task of assessing an option's likely congruence (fit) with the decision-maker's dominant goal(s) and comparing it to other alternatives will be even more complex and susceptible to ambiguity and misunderstanding when the option under consideration is an institution or program in which an amalgam of sanctioning measures is involved. Consequently, the risk is higher that offenders may be subjected to all-or-nothing involvement in the standard regimes of, for example, a day treatment center or boot camp, when perhaps only one or more of the program elements is really warranted or desired. Where judges are induced to make decisions about sanctioning options in terms of "kitchen-sink" or "black-box" programs, rather than on the basis of rigorous analysis of what might be the most parsimonious and otherwise appropriate combination of specific intervention measures of which they are comprised, the resulting potential is great for overprogramming, is wasteful, and possibly a counterproductive application of sanctioning resources.

---

**CONTINUUM OF SANCTIONS**

---

**I. What Is a Continuum of Sanctions?**

- The definition of the term “sanctions” is: “Coercive measures or interventions taken to enforce societal standards.”
- The definition of the term “continuum” identifies its basic characteristic as an ordering or grading on the basis of some **fundamental common feature**.
- Therefore, combining the two results in the following definition:  
*A continuum of sanctions is a variety of coercive measures taken to enforce societal standards, ordered on the basis of a fundamental common feature.*

**II. What Might Those Fundamental Common Features Be?**

- A.** Sanctions may be scaled or graded on a continuum. But on what basis will this be done?

Some continuum options might include these goals of sentencing:

- retribution;
- prevention; or
- restoration.

- B.** A continuum may be graded based upon goals or considerations **at** sentencing, such as:

- economic costs; and
- public satisfaction.

**III. What Are the Precursors to This Work?**

- A.** The first step in moving from a list of sanctions to a defined continuum is understanding precisely what options are available and exactly what each entails.

- B.** Sharing this common knowledge allows policymakers to undertake a discussion about which sanctions are equivalent or interchangeable. Such a discussion cannot take place, however, until sentencing goals for defined groups of offenders are articulated. Clarity of sentencing purposes is essential to any meaningful discussion of the similarities and differences and strengths and weaknesses of sanctioning options.

- C.** Identifying the overall sentencing philosophy of your jurisdiction is the fundamental first step to defining a continuum of sanctions. It is only after these broad agreements have been made that a discussion can occur about the principles upon which scaling or grading will take place.

### Creating Sentencing Policy

Kay A. Knapp\*

---

**Introduction** During the last few years, discussions of intermediate sanctions have moved from a focus on specific programs (boot camps, intensive supervision, residential treatment, home detention with electronic monitoring) to a focus on the development and implementation of policy. Conferences, symposia, and workshops that once were organized around designing, staffing, and operating programs have evolved into policy sessions. Workshop agenda for intermediate sanctions are now very likely to include topics related to visioning, sentence purposes, monitoring and evaluation, and structure as an expression of sentencing.

In this chapter we describe the building blocks, the essential considerations that go into the creation of sentencing policy. Such policy is at the heart of the intermediate sanctions process. It is in the development of policy that the decision-makers of the criminal justice system begin to function like a true system.

---

#### The Development of a Rational Policy Process

There are enormous benefits to a system of sentencing that is guided by rational policy. The most striking is the ability to achieve sentencing goals. A rational policy development process requires that (1) clear and realistic goals be established, and (2) the means by which they are to be achieved are explicitly articulated.

The development and implementation of a policy-driven system of sentencing is a daunting endeavor, however. It involves a major shift in the way business gets done. Because the decisionmakers involved have such different perspectives, it takes time and trust for them to begin to share some common ways of approaching issues.

#### The Key Components of Sentencing Policy

There are five key components in any sentencing policy:

1. Distribution of sentencing discretion;
2. Development and articulation of specific standards and principles;
3. Allocation of correctional resources;
4. Structural Relationships; and
5. Accountability.

#### Distribution of Sentencing Discretion

The most fundamental of sentencing issues is the distribution of discretion in the sentencing process. How is that discretion shared among the actors? The mapping tasks outlined in Chapter 9, Developing a Common Frame of Reference, might reveal a distribution with respect to intermediate sanctions that looks like this:

- The **prosecutor** has the ability to put a particular case on a track (a decision to charge at a level that requires a mandatory sentence, for example) that precludes an intermediate sanction.
- The **probation officer** can make a recommendation for or against an intermediate sanction in a particular case, a recommendation that might or might not include an investigation

of the availability of community resources for this offender.

- The **Judge** can fashion an intermediate sanction for a particular case. In some instances, the judge might defer to a probation officer to fashion the specific intermediate sanction. In some jurisdictions, the judge's choices are limited to probation or prison, either because others control access to intermediate sanctions or because those resources are not available.
- **Corrections administrators** sometimes control access to the programs that are used in fashioning an intermediate sanction. (The judge sentences the offender to a term in jail or to probation, and the corrections officials decide whether or not he or she will be placed on work release or

---

© Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

\*Kay Knapp is the President and Director of the Institute for Rational Public Policy, where she has worked with states from Alaska to Louisiana on structured sentencing, policy-oriented sentencing simulations, and criminal justice information systems. In more than fifteen years of sentencing reform efforts, she served as Research Director and Director of the Minnesota Sentencing Guidelines Commission and worked for the Federal Judicial Center developing judicial training programs.

assigned to a treatment or training program, what level and terms of supervision will be ordered, and so forth.) Probation officers also play a large role in determining the response to probation violations.

- The use of many intermediate sanction resources is shared with post-prison placement, in which **parole and corrections agents** exercise discretion.

A policy development process provides the opportunity—indeed the necessity—to examine and evaluate that distribution of discretion. The process can be used to understand that distribution as well as to change it. The development of sentencing guidelines, for example, generally involves a redistribution of sentencing discretion from decisionmakers at the end of the sentence (such as prison administrators and parole officials) to those at the beginning (judges, prosecutors, and probation officers).

In the area of intermediate sanctions, many jurisdictions are using the policy development process to examine whether judges or corrections officials should control access to corrections resources. In other jurisdictions, the question is the role of judges in sentencing cases that result from plea agreements, where an intermediate sanction might have been appropriate but was not considered. A clear understanding and a realistic acknowledgment of the exercise of sentencing discretion is critical in a policy-driven approach to sentencing even if changing the distribution of discretion is not an issue.

While there is no “right” answer regarding the appropriate distribution of sentencing discretion, certain distributions are easier to integrate into a policy approach. It is more difficult, for example, to monitor highly diffuse distributions with shared discretion among many actors. Accountability is hard to establish and review. It is also more difficult to monitor the discretion of some actors than others. For example, monitoring the sentencing discretion exercised by prosecutors is challenging because prosecutorial

decisions regarding sentencing are invariably linked to evidentiary issues (that is, the strength or weakness of the case). It is almost impossible to sort out sentencing issues from evidentiary issues in prosecutorial actions. On the other hand, it is relatively easy to monitor sentencing decisions made by judges. Evidentiary issues generally do not play a large role in their sentencing decisions because guilt at a particular threshold has already been determined or admitted. Judges are also accustomed to articulating the reasons for their actions on the record, further facilitating ease of monitoring.

The policy development process should include the actors who have significant sentencing discretion. Their support will be critical to the success of any policy resulting from this process, so it makes sense to ensure that they have a role in creating it. Their participation is also needed because those with sentencing discretion have knowledge about the way the system operates and how behavior might change if the system is changed in certain ways. That type of information is essential in developing a realistic, thoughtful, and implementable public policy.

### ***Development and Articulation of Specific Standards and Principles***

Policy expresses the standards that exist or are developed to guide the exercise of discretion in decisionmaking. The importance of **articulated** policy is that it ensures that everyone agrees to or acknowledges the content of the policy. Explicit policy ensures that decisionmakers are acting in a coordinated way in relation to policy goals, that is, that each actor’s decisions are serving the same purpose or purposes.

Articulated policy, as opposed to informal practice (“the way things are done”) or totally individualized decisionmaking, provides key information to new judges, prosecutors, defense attorneys, and probation officers regarding the purpose of the criminal justice system in their jurisdiction and their role in fulfilling it. Finally, it allows those not involved in day-to-day

criminal justice operations, such as legislators and the public, to understand the basis on which decisions are made in the criminal justice system.

As discussed in Chapter 8, Agreeing on Goals, policy standards must be grounded in goals and values, sentencing purposes, and desired outcomes. Sometimes sentencing purposes conflict. For example, the goal of punishment that is proportional to the seriousness of the offense might conflict with the goal of offender rehabilitation in some instances. In the complex business of criminal sanctioning, values and goals are bound to conflict from time to time. It is important to develop policy that distinguishes different goals and prioritizes them: this is critical for effective resource allocation and for fairness in sentencing.

Policy standards must be realistic if they are to be achieved. Unrealistic goals can result in undesirable effects. For example, targeting an inappropriate population for an intermediate sanction program can set offenders up for failure, resulting in probation revocation and imprisonment. This cycle increases costs by putting offenders through both intermediate sanctions and imprisonment. Alternatively, unrealistic targeting criteria can result in dramatically increasing sanctions for minor offenders, resulting in the diversion of resources from more serious offenders.

Policy standards can be very general or very specific. In the area of intermediate sanctions, policy can be as general as community corrections acts that provide state funding for a variety of local intermediate sanctions that target property offenders. Policy can also be much more specific, with a unit-based approach and exchanges among sanctions and fairly specific targeting of offenders. (The unit-based approach and exchanges are discussed in Chapter 6, Defining a Continuum of Sanctions.)

To some extent, the more specific the policy, the greater the ability to plan for correctional resources and to implement policy successfully. Specificity does not necessarily imply a rigid or mechanical application; there can be considerable

## **Exhibit 7-1**

### ***Position Paper on Criminal Sanctioning, Colorado Criminal Justice Commission***

Adopted December 18, 1992

*The following policy framework, developed by the Colorado Intermediate Sanctions Project Team, is an example of one jurisdiction's policy development effort regarding the use of intermediate sanctions for adult felony offenders.*

**Introduction:** The Criminal Justice Commission was created by the Colorado General Assembly in 1989 with mandates to study the criminal justice system and make recommendations for improvements. The mandates specifically refer to recommendations regarding sentencing structure, use of treatment programs, cost-effective use of correctional resources, and system coordination.

**Findings:** The Commission finds that authority within the criminal justice "system" is diffused among various branches and levels of government. This separation of power and authority provides for checks and balances within the system, but it also contributes to a system without common direction for some of its critical functions. The Commission finds that the system lacks a coherent policy to guide the sanctioning of criminal offenders. Without such a policy, decisionmakers have no point of reference for consistency within the system, it is difficult to project resource needs, and it is difficult to establish accountability within the system.

**Recommendation:** The Commission recommends and endorses the following sanctioning policy for adult felony offenders. It is intended to provide direction for the judiciary, district attorneys, the parole board, probation and parole staff, community corrections boards and programs, and other officials who have a role in the sanctions imposed on adult offenders.

#### **Policy**

Criminal justice officials exercise discretion in rendering sanctioning decisions for adult offenders in Colorado. Those decisions shall be based on principles of equity, fairness, parsimony, and nondiscrimination, with concern for cost efficiency and satisfaction from the general public that justice is served.

Sanctions for adult offenders shall address, in order of priority, the community, the victims of crime, and the offenders. (1) For the community, sanctions shall pursue the objective of **crime prevention**. Such sanctions should incapacitate or control offenders when necessary, provide opportunities for offender rehabilitation to reduce future criminal behavior, and deter future criminal activity. (2) For victims and communities harmed by crimes, sanctions should be imposed that provide maximum opportunities for **reparation**. (3) For offenders, sanctions shall be imposed that provide **retribution** in proportion to the seriousness of crimes.

flexibility to fashion the most appropriate sanction for a particular case under a detailed and specific system of exchanges in a menu approach.

#### ***Allocation of Correctional Resources***

Just as we must be cognizant of the distribution of sentencing discretion, so must we be cognizant of the resources available or necessary to implement the policy. The articulation of policy is useful to identify resource needs. If, for example, an array of particular intermediate sanctions is to be used for a defined group of offenders, it should be possible to estimate the number of offenders in that group and the level of resources necessary to do a credible job.

Alternatively, what is the best use of available and finite resources? In this case, policy can be used to spell out the best use of existing resources or to redirect or restructure them.

Both of these approaches, one that links policy to resources and one that links resources to policy, are appropriate and necessary. The process is iterative and dynamic.

As noted in the preceding section, the more specific the policy standards, the greater the ability to plan for correctional resources and to successfully implement policy. A prerequisite for allocating correctional resources is a good system for monitoring sentences. With such a system, target populations can be closely monitored, as can the use of various sanctions vis-a-vis targeted groups. Software systems are available for assessing the impact of policy options on intermediate sanctions.

#### ***Structural Relationships***

Policy must acknowledge and address structural relationships, including those between state and local governments and between the judicial and executive branches of government. These relationships tend to encompass parts of all of the policy elements that we have been addressing here: purposes, goals, the exercise of discretion in decisionmaking, and the use of resources. Who is responsible

for funding intermediate sanctions when diversion from prison is one of the goals? How is discretion shared? What are the accountability procedures for the exercise of discretion and access to resources? What funding mechanisms are in place or needed?

There is a wide range of structural arrangements among the states. In some states (Alaska, Missouri, Georgia), the state department of corrections funds and operates most correctional resources. Some observers note that in an over-crowded state system, it is difficult for intermediate community sanctions to compete with the needs of the institutions when those programs are combined in a single department. A more common arrangement is for the state to fund and operate prisons, counties to fund and operate jails, and counties and states to jointly fund some intermediate sanctions that are under county operation (Minnesota, Oregon, Kansas, Arizona). In another arrangement, the state funds and operates prisons and awards grants to private organizations to provide and operate programs for fashioning intermediate sanctions (North Carolina). In still another, the state funds and operates prisons, and another state agency funds and operates probation, parole, and intermediate sanctions (South Carolina). As budgets tighten, state/local funding formulas have become increasingly problematic. In addition, the goals of diverting offenders from prison or jail have become more difficult to establish and achieve.

A second major structural relationship is that between the executive and judicial branch. In some states, probation has long been a part of the judicial branch of government (Kansas, Arizona, Texas). In others it has been a part of the executive branch (Georgia, Oregon, North Dakota). The development and operation of intermediate sanctions, especially through the enactment of community corrections systems, has sometimes caused a rethinking of the traditional arrangement. While in many ways it makes sense to integrate the operation of probation with intermediate sanctions, such integration does not

always occur, particularly when probation has traditionally been a part of the judicial branch. In Kansas, for example, probation was left in the judicial branch, and community corrections was placed in the local executive branch. In Minnesota, probation had been a judicial function in two major counties and a state executive branch function in the other counties. With the implementation of a community corrections act, probation, parole, and community corrections were successfully integrated within the local executive branch. In Arizona and Texas, probation and community punishments have been integrated within the courts at the local level.

It is apparent that the structural arrangements among state government, local government, the executive branch (at each level of government), and the judicial branch (at each level of government) are varied, complicated, and not easily established, changed, or managed. This complexity is further compounded by the overlay of two issues that are not synonymous: First, who administers and operates the sanctions—local or state agencies, executive or judicial branch? Second, who has access to the sanctions—the judge, probation officer, or department of corrections? These issues are among the thorniest in the area of intermediate sanctions.

### **Accountability**

The final key policy issue is accountability. A policy-driven sanctioning system requires monitoring and review—not just of offenders, but of criminal justice officials in the exercise of their discretion. The articulation of standards provides the measure by which to judge how well officials have done in matching targeted offenders with the appropriate sanctions.

In order to judge appropriateness, good information is needed on offense and offender characteristics and on case processing, including sentencing information. Chapter 10, Building an Information System to Monitor Sentencing, addresses the establishment and operation of a monitoring system that can be used for accountability.

Obtaining information to establish and maintain accountability is an area that has not been adequately addressed, but one that can and must be improved. The adoption of a policy-driven approach to sentencing makes it much easier to establish and maintain substantively useful sentence monitoring systems because the key elements and factors for assessing offenders and sanctions are already defined. That is one of the most important tasks in designing a monitoring system, and it comes ready-made with a policy-driven approach.

### **Risks and Fears in a Policy Process**

These five issues—distribution of sentencing discretion, development and articulation of policy standards grounded in values and goals, resource allocation and coordination, structural relationships, and accountability—are the major issues that need to be addressed in a policy development process. The benefits of a policy-driven approach are clear: better allocation of finite resources, more effective sanctions, increased fairness, better planning capability, and a greater ability to learn from our applications.

Despite the benefits, a policy-driven approach to sentencing is difficult to achieve. There are a number of perceived risks and fears. First, there is a fear of process, that is, engaging with other groups and other decisionmakers. It may be that every group in a jurisdiction is dissatisfied and wants change. However, when examined more closely, it becomes apparent that each group wants **every other** group to change the way they do business, but each is unwilling to change the way it does business. For example, we often hear, “If only the legislature would appropriate more money,” or “If only judges would sentence the right offenders to the right programs,” or “If only prosecutors would charge differently.” Engaging in a policy process is risky because **all** groups may have to do business differently.

Another perceived risk is the fear of the unknown. The policy that will result from this effort is not known at the start of the process. While it sometimes seems that things cannot get much worse, they almost always can. But it all depends on your definition. “Worse” for some might mean that the policy will result in more incarceration. For others, the policy product might be aimed at

prison diversion and represent a way for the legislature to get off the hook of funding more prisons. Others fear that the policy might result in a redistribution of sentencing discretion. Many, especially elected officials, fear public reaction to the articulation of a realistic sentencing policy.

A good process, one that is ongoing and that includes appropriate participants who are committed to it, is the best guard against untoward results. But the fears and perceived risks can get in the way of

participants’ establishing and committing to a good process. It is important for the policy group to openly and honestly address the risks that are perceived as well as the interests that are shared in developing policy. Attention needs to be given to how realistic those perceived risks are and to what might be done in the process of developing the policy to allay or minimize them.

## **Exhibit 7-2**

### ***Organizational Structure and Mission, Sacramento County Criminal Justice Cabinet***

*As one of their earliest efforts in the Intermediate Sanctions Project, policymakers in Sacramento County, California, identified a need to examine the structure through which criminal justice policy was addressed. As a result of this examination, the team established a coordinated system of communicating and exploring criminal justice policy.*

*The following excerpt details the complex criminal justice issues facing this jurisdiction and describes the rationale for the establishment of a policymaking body to gain control of those issues.*

#### ***Need for Planning and Policy Change***

During the 1980s, Sacramento County experienced a 32 percent population increase, from 783,381 residents to a 1992 population of more than 1,041,219. Already the seventh largest county in California, Sacramento is expected to grow at a rate exceeding those of most other heavily populated regions of the state. This growth has brought with it public demands for additional and improved government services and an increased concern for criminal justice issues.

Sacramento County and City governments have responded to this public concern by taking a tougher stance on crime. Additional police and sheriff's officers have been hired. Their activities have included crackdowns on alcohol and other drug abuse crimes and teenage gangs. The legislature has defined new crimes, increased criminal sentences and penalties, and enacted more mandatory minimum sentences. New judicial positions have been created to handle the increasing criminal caseload.

As a result of these measures, more offenders are being incarcerated. Tougher probation conditions have increased the number of adult and juvenile offenders incarcerated for violating probation. Judges are increasingly sentencing felony and habitual misdemeanor offenders to serve time in jail, often in combination with a period of probation. This has led to an increase in the use of jail and prison sentences in felony cases from 63 percent in 1977 to 85 percent in 1990. Another major change has been an increase in the number of convicted defendants participating in the Sheriff Department's Work Program, with driving under the influence (DUI) and serious traffic offenders constituting over 75 percent of the 21,275 defendants in this program. Punishments such as fines, restitution, and treatment are being used in addition to jail sentences or juvenile hall commitment.

To house the increasing number of incarcerated offenders, county jail capacity was increased by construction of the \$125 million Main Jail and an expansion of the Rio Consumes Correctional Center (RCCC) branch facilities. The budget needed to operate these facilities now exceeds \$47 million a year. These new and expanded facilities represent only part of the county's response. Studies have been conducted to identify alternatives to incarceration programs. Special case processing practices have been implemented. These programs and practices allow for earlier release of selected incarcerated inmates while still maintaining a high standard and regard for public safety.

Despite all these efforts, and a tenfold increase in spending for justice agencies in the 1980s, public confidence in the local justice system has decreased while the fear of crime has increased. Agency administrators and elected officials express concern about inadequacies in the justice system. A common opinion is that the criminal justice system has undergone a costly expansion in the last decade that has not resulted in a meaningful or measurable impact on criminal conduct. It has been suggested that the system itself is facing a crisis in the 1990s.

Increases in staffing, technology, and funding have only allowed the system to keep pace with the number of arrests without allowing it to curb criminal conduct. During 1990, 61,342 adults and 7,792 juveniles were arrested in Sacramento County, representing 6.6 percent of the population. Analysis shows that the number of adult arrests is increasing at a significantly faster pace than the growth in the county's adult population. Felony adult arrests are at the highest level at any time since 1964, with serious violent crimes and drug law violations accounting for nearly one-fourth of the arrests. Adult arrest rates exceed the peak levels of the 1970s. Similar patterns are evident among juveniles.

***Exhibit 7-2 continued***

These increasing arrest rates are overwhelming police, corrections, and judicial resources and seriously crowding the jails and juvenile hall. The Board of Corrections (BOC) 1990 rated capacity of the County's jail facilities was 2,890. Based on this standard, the average daily inmate population (ADP) in 1990 exceeded available bed space by 9 percent. Projections show the jails may have a shortage of 1,059 beds in five years, requiring modifications to programs, services, and staff. These crowded conditions have also led to an increased exposure to litigation. A recently filed lawsuit, for example, alleges that crowding at the new Main Jail and RCCC has resulted in detainees having to sleep on the floor and has limited or restricted services to inmates in violation of rights established under the 8th and 14th Amendments. In response to this suit, the federal court has set a "cap" of 1,808 inmates who can be housed in the Main Jail. Other litigation issues are currently set for further judicial review.

The courts have also been affected by these work load increases. Case processing times are lengthening. The average time to dispose of a typical felony complaint from arrest to conviction has increased by 21 percent, from 126 days in 1977 to 152 days in 1990. In addition, victims, witnesses, and jurors have expressed concern about the time-consuming complexity of the process. The trial of civil court cases is adversely affected because of the expansion of criminal calendars, and there is a growing need for both improved secure facilities and expansion of courtroom space.

Public confidence has also declined because of a perception that a large number of probationers are totally unsupervised. Also, crowded jail conditions have led to a policy of releasing less dangerous pretrial misdemeanant detainees. This has created the perception of a "revolving door" that criminals are using to escape prosecution. This perception is supported by the fact that the failure-to-appear (FTA) rate for misdemeanants booked and released exceeds 60 percent. Issuance of bench warrants for these and other fugitives has caused a backlog of unserved warrants that exceeds 100,000.

The issue of sentencing is also being viewed with concern both by the public and the judiciary itself. Sentencing practices are often seen as inconsistent and of little support to those defendants wanting to make lifestyle changes that might reduce recidivism rates. Criminal defendants have significant psychological, social, economic, family, education, and treatment needs. At this time, there appear to be no ties between the court process and the human service agencies that could address these needs. In addition, there are very few alternative punishment options available to judges. Consequently, judges have to sentence criminal defendants either to county or state institutions or return them to the community on probation. While longer periods of prison or jail confinement are seen as appropriate for most repeat offenders and probation/parole violators, incarceration may be ineffective, inappropriate, or counterproductive for certain other targeted defendants.

A further indication of an adult and juvenile justice system that is failing has been the inability to effect change in the criminal behavior of defendants. Recidivism is high and is continuing to increase. In 1983, a felony pretrial detainee in the county jail had been arrested an average of six times. By 1989, that average had increased to eight times. As a consequence of this trend, the public has felt the need to "protect itself." Housing developments are now being designed as "gated" or "walled" neighborhoods, and private security firms are flourishing.

Another important concern is the growing realization that local governments do not have the financial resources to handle the increasing criminal justice caseload. The departments within the system are burdened with divergent goals and with priorities that are not clearly defined, well communicated, or effectively coordinated. Their budget requests are often directed to the symptoms of the system's shortcomings, rather than the major problems of the system. Programs and policy changes seem to be reactive, rather than proactive, in responding to needs.

From a planning perspective, the system has not yet adopted a systematic and comprehensive approach to identifying existing and long-term requirements for law enforcement, corrections, and court agencies. The coordinated leadership necessary to establish public policies based on research, evaluation, and monitoring of previous policy decisions is lacking. The data required to determine whether the current enforcement, case processing, administrative, and sentencing practices are working have not been developed. Only limited information measuring system performance or concerning the experiences of other jurisdictions is available.

***Exhibit 7-2 continued***

A comprehensive approach to educating the public about its unrealistic expectations of justice agencies has not been undertaken. Only minimal efforts have been made to obtain community acceptance for a more balanced range of intermediate punishments, which combine the characteristics of punishment, surveillance, and rehabilitation. Innovative corrections programs that might build confidence in local corrections policies have not been introduced to the community. The extent of the county's fiscal problems in responding to jail crowding and crime issues, and the limited role justice agencies can realistically play, have not been thoroughly explained to the public. The public's demand for "tough" criminal justice policies has discouraged system officials from undertaking such educational efforts.

In recognition of the critical need to address these issues, and with the realization that the criminal justice system cannot continue to function in this manner, Sacramento County is proposing to establish a new Criminal Justice Cabinet. The Cabinet will include city and county elected officials and budget managers, and court, criminal justice, and human services department personnel. Through a coordinated planning effort, the Cabinet will review, evaluate, and make policy recommendations on common juvenile and adult justice system issues.

***Cabinet Composition***

The Criminal Justice Cabinet brings together the various institutions that can effect the changes necessary to improve the current system. The Cabinet is a convention of delegates from the various branches of State and local government that constitute, operate, serve, fund, regulate, and otherwise affect the juvenile and criminal justice system in Sacramento County. It constitutes a voluntary association of government institutions represented by the delegates.

The Cabinet is composed of the following officials (not designees):

- Presiding Judge, Superior Court, Chairperson
- Presiding Judge, Municipal Court
- Presiding Judge, Juvenile Court
- Sacramento County State Assembly representative
- Board of Supervisors—member (designated by Chairperson)
- Sacramento City Council—member (designated by Mayor)
- District Attorney
- Sheriff
- County Executive
- Public Defender
- Chief Probation Officer
- Health Director
- Chief, Sacramento Police Department.

***Principal Mission***

The mission of the Cabinet is to study the Sacramento County juvenile and criminal justice system, identify deficiencies, and formulate policy, plans, and programs for innovative change. In addition, its mission is to communicate and present planning, financial, operational, managerial, and programmatic recommendations to the agencies represented on the Cabinet.

In order to discharge its primary mission, the Criminal Justice Cabinet will be organized into three committees:

1. Juvenile Institutions and Programs Committee;
2. Intermediate Punishments Committee; and
3. Adult Facility Planning and Operations Committee.

A technical services group will be formed to support the work of these Cabinet committees. The basic mission and membership of each committee is outlined ....

**Exhibit 7-3**

***Minnesota Sentencing Guidelines and Commentary***

***Statement of Purpose and Principles***

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.

The sentencing guidelines embody the following principles:

1. Sentencing should be neutral with respect to the race, gender, social or economic status of convicted felons.
2. While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons.
3. Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
4. While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

---

## **Exercise 7-1**

### **The Interests and Risks Involved in Developing Policy**

It is important for a policy group to openly discuss both the interests and risks involved in developing policy. Such a dialogue will help group members to establish common ground and develop an understanding of the factors that influence their views. The following exercise is designed to assist a policy group in beginning these discussions.

#### **Objectives**

1. To facilitate a discussion that will help team members understand one another's interests and risks in developing and implementing policy in the area of intermediate sanctions.
2. To identify obstacles to the development of policy—that is, those things that represent risks to team members.
3. To identify strategies to overcome those obstacles.

#### **Instructions**

1. Have each team member address his or her interest in the development of intermediate sanctions policy by addressing the following questions:
  - How might the development of policy help or hinder decisionmaking in the sanctioning process?
  - How might the development of policy facilitate or hinder relationships with other decisionmakers or agencies?
  - Would policy enhance or otherwise change the accountability of decisionmakers?
2. As a group, identify the risks that agencies or individual decisionmakers may face in participating in a policy development process.
3. As a group, identify the obstacles to policy development.
4. As a group, brainstorm possible ways to counter or neutralize the risks and obstacles that have been identified. Discuss the support that exists for policy development and how that support can be used in this effort.

## *Creating Sentencing Policy*

---

### **I. Five Key Components of Sentencing Policy**

1. The distribution of sentencing discretion;
2. The development and articulation of specific standards and principles;
3. The allocation of correctional resources;
4. The relationship of state and local governments; and
5. Accountability.

### **II. The Intermediate Sanctions Process: Benefits and Risks in Creating Sentencing Policy**

#### **A. Benefits of a policy-driven approach include:**

- better allocation of finite resources;
- more effective sanctions;
- increased fairness;
- better planning capability;
- greater ability to learn from our applications; and
- a policy-driven approach, which is the best guard against untoward results.

#### **B. Perceived risks and fears in a policy-driven approach:**

- Often, every group in a jurisdiction wants change—each group wants every **other** group to change.
- Engaging in a policy process is risky because **all** groups might have to do business differently.
- The policy that will result is not known at the start of the process.
- Things might get worse. “Worse” is defined differently by each group—increased level of incarceration, decreased (or increased) sentencing discretion, negative public reaction.

### **III. Distribution of Sentencing Discretion**

#### **A. Traditional points of sentencing discretion:**

- The **prosecutor** establishes the sentencing path through the charges filed and sentence negotiations.
- The **probation agent** influences the sentence through sentence recommendations and the identification of community resources. After sentencing, the probation agent influences sentencing through responses to probation violations.
- The **judge** sets the sentence.
- **Corrections administrators** and supervising agents establish sanctions when the judge delegates that authority to them. Sometimes they control access to programs.
- Other points of discretion include **parole and corrections agents**.

## **Creating Sentencing Policy**

---

**B.** The policy development process:

- is used to examine and evaluate the distribution of sentencing discretion;
- may change or realign the distribution of sentencing discretion; and
- should include those actors with significant sentencing discretion.

## **IV. Articulation of Policy**

**A.** Reasons for articulating policy:

- articulating policy ensures that everyone agrees to the content of the policy;
- provides key information to new judges, prosecutors, defenders, and probation officers; and
- allows those not involved in the criminal justice system, such as legislators and the public, to understand the basis on which decisions within the system are made.

**B.** Features of articulated policy:

- It is grounded in **goals** and **values**.
- It **establishes priorities** when certain goals or values conflict.
- It must be **realistic** if it is to be achieved.
- It can be **general or very specific**.
- The more specific the policy, the greater the ability to plan for correctional resources and to implement the policy.
- Specific policy can be fashioned to be flexible enough so that the most appropriate sanction for a particular case can be applied.

## **V. Allocation of Correctional Resources**

**A.** The articulation of policy is useful in:

- identifying resource needs; and
- spelling out the best ways to use existing resources.

**B.** A necessary prerequisite for allocating correctional resources is a good system for monitoring sentences.

## **Creating Sentencing Policy**

---

### ***VI. Relationship of State and Local Governments***

**A.** There is a wide range of structural arrangements among the states:

- The state department of corrections funds and operates most correctional resources (Alaska, Missouri, Georgia).
- The state funds and operates prisons, counties fund and operate jails, and both jointly fund some intermediate sanctions, which are under county operation (Minnesota, Oregon, Kansas, Arizona).
- The state funds and operates prisons and awards grants to private organizations to provide and operate intermediate sanctions programs (North Carolina).
- Probation has been structured as a part of the judicial branch in some states (Kansas, Arizona, Texas) and the executive branch in others (Georgia, Oregon, North Dakota).

**B.** Key issues regarding structural arrangements include the following:

- Structural arrangements among state and local governments, and the executive and judicial branches are various, complicated, and not easily established, changed, or managed.
- Who administers and operates the sanctions and who has access to the sanctions are difficult issues to resolve.

---

### ***VII. Accountability***

**A.** A policy-driven sanctioning system requires monitoring and review, not just of offenders, but of criminal justice officials in the exercise of their discretion.

**B.** The articulation of standards provides the measure by which to judge how well decisionmakers have done in matching targeted offenders with the appropriate sanctions.

**C.** To judge appropriateness, good information is needed about:

- offense characteristics;
- offender characteristics; and
- case processing and sentencing information.

## Agreeing on Goals: The Heart of the Process

*Peggy McGarry*

**Introduction** *Agreeing on goals is the heart of the intermediate sanctions process, because all other parts of this effort are aimed at helping you to do a better job of achieving your goals. It is also the hardest part of the process, because it requires revelation and discussion of personal beliefs and values, which are typically held close. Examining our loud the priority given to fairness in our sentencing practices or the place of inflicting pain in our sanctioning system can be uncomfortable, especially when you find yourself in disagreement with people whom you respect and work with every day.*

*The content of these discussions is fairly conceptual and thus is often dismissed as too academic and abstract for busy people handling pressing problems. The truth is that policymakers and practitioners must have these conversations, for it is they who intervene daily and in dramatic ways in the lives of those accused and convicted of crime. When individuals exercise that kind of power, it is essential that they are clear about why they are doing it.*

*This chapter suggests some ways to categorize, think about, and work through why you sanction people and the values that will guide how you do it. The chapter does not suggest what those goals and values should be, but merely how to arrive at them yourselves. As you will discover, the tasks described in many of the other chapters in this volume draw upon the work of this section. In Chapter 6, *Defining a Continuum of Sanctions*, for example, Alan Harland explores how goals and values come together in crafting a sanctioning system, while in Chapter 13, *Program Design*, Madeline Carter points out the connection between sentencing goals and the elements chosen to create a sanctioning program.*

### **What Do We Mean by Goals?**

Goals are the statement of what we want to achieve, the direction in which we are headed. As in many other areas of social policy, we usually find it easier to describe what is wrong with our criminal justice system, or with our sentencing practices or options, than to detail our vision of what that system, those practices or options, should produce.

In the context of intermediate sanctions, stating our goals is declaring why we sanction, why we choose to respond to criminal behavior in the first place, particularly for those offenders and offenses that fall in the vast middle range

of behavior seriousness. Answering the question, “Why do we sanction criminal behavior?” has kept philosophers, anthropologists and sociologists, legal scholars, and criminal justice practitioners engaged in passionate debate for centuries. Such debate is anything but academic, however, in the context of considering intermediate sanctions.

Consider the four learned judges who are discussing the disposition of a particularly difficult, though not at all unusual, case that has come before one of them for sentencing. The offender is a 20-year-old woman, the mother of two young children, who has been convicted of distributing cocaine. She has prior convictions for possession, prostitution, felony shoplifting, and passing bad checks over \$500. She is clearly not a drug lord or big-time seller; she is a drug user who has probably sold her own body to maintain her habit. She has an impressive failure rate: two prior felony convictions.

The first judge is a retributivist: He believes that illegal conduct must be punished for the simple reason that it is wrong and must be so judged. This offender has committed a fairly serious offense, and should be punished accordingly.

The second judge believes that the only response to crime that makes sense is one that achieves some good for society, that uses the occasion of sentencing to rehabilitate the offender, to “cure” her so that she will not have a reason to commit crime in the future.

The third judge agrees with the second that a sentence must have as its aim the achievement of some societal good, but for him that good is attained through the limitation of this offender’s ability to commit crime for some period of time into the future. This is good for those she might victimize and, he believes, for her as well.

The fourth judge is also concerned about having a positive impact on the larger community. She wants to frighten this offender into compliance with the law by making the results of her conviction unpleasant and making sure that she will be caught if she offends again.

These judges' positions represent four of the classic philosophical purposes of sanctioning: retribution or punishment, rehabilitation, incapacitation, and specific deterrence. As you can readily see, each position would lead its holder to a quite different sentencing decision. Some of the sentences might share features (a period of incarceration, for example), but overall they would look quite different.

Once established, goals function chiefly as criteria by which we make choices among competing or conflicting options, set priorities in times of limited resources, define success, and judge our accomplishments. For that reason, goals should be clear and realistic.

In the case of the criminal justice system, a number of different concepts are frequently lumped together under the term "goals." In our experience, however, it is important and helpful to identify and discuss them separately. (A further discussion and definition of these terms follow later in this chapter.)

### ***The Goals of Sanctions***

Also called philosophies or purposes of sentencing, these familiar concepts assert aims for sanctioning or responding to criminal behavior and thus determine the content of the sanction. These goals include:

- Retribution
- Rehabilitation
- Deterrence
- Specific
- General
- Incapacitation
- Restoration.

### ***Normative Values***

Normative values are the rules by which we choose to conduct the business of the criminal justice system, the norms that guide our behavior, choices, and decisions. These values might include the following:

- Proportionality
- Equity
- Parsimony
- Humane treatment.

### ***System Goals***

These are the interests or concerns that policymakers, as stewards of the public trust, bring to discussions of adjudication and sentencing. While these goals may vary across jurisdictions, they typically include the following:

- Using resources effectively and efficiently;
- Reducing correctional crowding;
- Processing cases in a timely manner;
- Enhancing system credibility; and
- Generating resources to offset costs.

### ***The Objectives or Desired Outcomes of Individual Sentences***

Because the circumstances of each case are somewhat different, judges and other decisionmakers involved in sentencing typically seek specific objectives in individual cases that express how the primary sanctioning goal is to be met, or that are secondary to it. These objectives will vary widely, but a few representative examples might include the following:

- Restriction of offender movement to certain times and/or destinations;
- Completion of a treatment or training program;
- Reduction in alcohol consumption;
- Completion of a work assignment; and/or
- Payment of full restitution to the victim.

### ***The Goals of Programs***

When discussing intermediate sanctions, many of us use the words "sanction" and "program" interchangeably. Sanctions are legally binding orders of the court imposed in response to violations of the law or court orders. A sanction may incorporate a program as a means to achieve the purpose of the sentence, but the program is not the sanction.

Programs are typically organized around the choice of a particular strategy to address a specific problem or need. (For example, a private group might create a residential program for female offenders with children who have no permanent home, with an emphasis on preparing those women through training, support, and assistance to obtain their own apartments and live on their own. A judge might sentence such an offender to the program with the intention of helping her to avoid future crime.) Therefore, programs have their own internal goals. These may sound very similar to the goals and objectives of sentences, but they are organizational objectives that govern the structure, activities, staffing, and internal operating policies of the program. These organizational objectives apply to all participants, regardless of their individual sentences or even whether or not they are offenders.

### ***What Does It Mean to Agree on Goals?***

At its most basic, agreeing on goals is nothing more than agreeing on the end point toward which you are working. Agreement is necessary for the same reasons that a blueprint is: You do not want to start construction without knowing whether the building is to be a church or a house.

Some policymakers may bring a certain skepticism to this discussion because of their inherent respect for the law and their confidence that the law provides adequate instruction regarding the purposes of criminal sanctions. Indeed, the sentencing statutes at the national, state, and local

levels do provide a foundation for our discussions about sanctions. That foundation is typically very broad, however, and leaves much unspoken about how multiple goals should interact and how individual discretion will be acted upon. Perhaps the first issue to be agreed upon in a discussion about sanctioning goals is that the policy group has a legitimate role in articulating these goals, objectives, and values for the community that the group is elected or appointed to represent and serve.

In the case of a policy group representing the key agencies and decision-makers of a jurisdiction's criminal justice system, agreeing on goals is a process aimed at bringing to bear diverse and sometimes conflicting goals, values, and interests in a consistent, principled manner on the decisions of sentencing and correctional resource allocation.

The first step in agreeing on goals is the policy group's agreeing on a general set of policies that articulates the purpose of intermediate sanctions in their jurisdiction. This purpose might be expressed as an overall sanctioning goal for intermediate sanctions, a primary sanctioning goal for each category of offenders to be considered for intermediate sanctions, or a combination of both.

Thus, for example, one policy group might adopt a policy statement that asserts the restoration of the community—that is, the victim, the offender, and the larger community—as the primary goal of intermediate sanctions.

Restoration is an encompassing purpose: In addition to the obvious goal of restoring the victim as much as possible to his or her state before the crime, it implies that the community must be returned to a state of equilibrium, to safety and calm, and the offender must receive such treatment and/or incapacitation as will produce that for the community. This overall goal would be expressed differently in different crimes: In the case of property crimes, restoration of the victim's loss is the primary objective; for sex offenses, treatment of the offender is to be com-

bined with a secondary objective of preventing or restricting contact between the offender and potential victims.

In a different jurisdiction, a policy group might choose a general policy statement that establishes the protection of the public through incapacitation and rehabilitation, depending on the circumstances of the case, as the primary purpose of intermediate sanctions. In this case, all sanctions would be chosen for their ability to ensure protection for the community over the long and short term.

The second step in agreeing on goals is the policy group's adopting a set of principles or values that will guide them in choosing the specific sanctioning options to make available or to create for various offender categories. These values and principles usually serve as limits in the carrying out of a sanctioning purpose.

For example, if the policy group was not guided by the principle of proportionality—that is, that the severity of sanctions should correspond as much as possible to the severity of the present offense—a group could, in pursuit of a goal of rehabilitation and assuming resources were not an issue, create and mandate long-term residential treatment for every offender with a drug, alcohol, or mental health problem, regardless of how minor the charge.

The third step is the group's acknowledging the system interests and goals that come into play in adjudication and sentencing decisions, and choosing those that they are willing to honor.

That might mean, for example, that a policy group would actively seek to identify jail-bound populations as priority groups for the creation of appropriate sanctioning options in order to reduce the jail population. The same group might reject revenue-generation as an interest to be honored even while recognizing it as a side effect of an option.

In working through and reaching agreement in all three of these areas, the policy group is creating a systematic

approach that will guide the myriad decisions regarding sentencing practices and options that it will be called upon to make.

Further on in their deliberations, the policy group may become involved in program design and redesign, which will involve their taking up the issue of program goals as well.

### ***Why Is Agreeing on Goals Important?***

The connected tasks of agreeing on goals and choosing values and interests to be honored are of particular importance in creating policy-driven intermediate sanctions. Given the level of public concern about crime, the dissatisfaction with current sentencing options, and the tremendous limits on public resources, jurisdictions can no longer afford to create programs on the basis of serendipity.

First, policymakers in this area must work harder than ever to ensure that sanctions are carefully chosen, designed, and implemented. It is not enough for decisionmakers to let public and private agencies create programs and admissions criteria, and then decide whether to use or not use them. Policymakers across agencies must engage in a thorough process of targeting, detailing precisely the desired outcomes for each sanction and the offenders for whom the sanction is intended. That means choosing the elements or features that can best deliver those outcomes and, just as important, eliminating those that do not. Such a process requires a clear understanding and agreement on sanctioning goals.

Second, it is impossible to measure success if success has not been defined. One of the biggest frustrations, cited universally by criminal justice policymakers, is lack of information on the effectiveness of programs. Planners and analysts respond with equal frustration that such information cannot be forthcoming until there is some agreement on a definition of effectiveness for each program and sanctioning option: Effective at doing what? (For example, reducing drug use or eliminating it?)

Punishing the offender or keeping him out of trouble?) For how long? (For example, until the sentence term is concluded or for three, six, or nine months after that?) At what cost? Until policymakers who use sanctioning options agree among themselves about the purposes that those options should serve and agree that the program's components meet those purposes, there will continue to be disappointment with available options.

Third, because there are many ways to achieve the same purpose, perhaps even for the same populations, it is essential that policymakers also agree on the values and system interests that will guide their choice of options. For example, a policy group might decide that a long jail term is called for to deter offenders convicted of relatively minor offenses, but who have been convicted of such offenses many times. The sheriff, however, reminds the group that they made it a priority to reduce the jail-crowding problem in the county. The representative of the county executive also questions whether such sentences would be the most efficient use of resources, another interest that the group agreed to honor. Having agreed to those interests, the group must look for a less intense response, one that still achieves deterrence but does not involve long terms (or perhaps any term) in jail, and that is appropriate in cost compared with the response made to other offenders.

Fourth, a jurisdiction cannot know if it has the "right" intermediate sanctions until its policymakers decide what they want to have in place and for whom. Second only to questions of effectiveness are policymaker concerns about the adequacy of the number and type of options available in their jurisdiction. They want to know if they have the right sanctions and programs, and if they have enough of them. Establishing goals and values for sanctions and choosing the outcomes desired for specific subgroups of the

offender population are fundamental steps in determining the answers to those questions. Matching the offenders who are in the system (their numbers and significant characteristics) with the goals and outcomes desired for them enables a policy group to look at the array of options available in their jurisdiction and decide if they have the right type or number of sanctions.

### ***Defining Terms***

Although it is important to have working definitions of the terms that are used in this chapter and elsewhere in this book, it is also important to note that volumes sufficient to fill a library have been written on the meaning and implications of these concepts. What follows are but brief introductions to them.

### ***Goals and Purposes of Sanctions***

As noted earlier, what are commonly called the goals of sanctions are articulations of the reasons why a society chooses to respond in particular ways to criminal behavior. (Why we choose to have a criminal law and label various behaviors accordingly is another issue.) Since almost all such responses are expensive and take public funds from other needs and possible uses, it is imperative that government agencies and policymakers be able to articulate to the public what purpose this effort called corrections serves.

### ***Retribution or Punishment***

Retribution justifies sanctions as the earned punishment for transgressing the law. It is founded on the belief that members of a community have an obligation to obey the laws of that community and that if the law is broken the individual deserves punishment. Unlike all other purposes of sanctions, retribution does not aim to use the occasion of sentencing

to achieve some future good result for the society. Punishment is meted out because a wrong has been committed and the transgressor must pay. A balance has been tipped (by the offense) and must be righted (by the punishment).

The philosophical underpinnings of this approach are many. Some focus on the importance of treating each individual as a fully responsible member of the community who must be held accountable for his or her own behavior. This view frowns on the idea of using the individual's error as a means to achieve some other good for the society because it devalues the individual's worth. Others focus on the societal need to expound community standards of behavior and to reinforce their importance by the act of condemning and punishing violations.

Inherent in this view of crime and sentencing is the notion that some transgressions are more serious than others and, accordingly, should be dealt with more severely. A central activity, therefore, in creating a sentencing scheme based on retribution is ranking crimes according to their perceived seriousness and grading punishment correspondingly. This matching of crime seriousness with punishment of commensurate severity is called the principle of proportionality and is central to the retributive approach.

Retribution focuses primarily on the act committed in the offense. There is debate among retributivists about how much attention should be paid to issues of motivation, harm, and responsibility: Why did the offender do what he or she did? How much harm was inflicted on others? How vulnerable were the victims? What was the offender's role—and, conversely, that of the victim and/or other perpetrators—in the crime? One view is that the central concern should be the nature of the offense, not the offender and his or her culpability. But others believe that this single focus blurs important distinctions between acts that may seem similar on their face but differ in relevant ways.

Any sanctioning system based on retribution will base its punishment on the seriousness of the crime. Estimations or projections of future risk should have no place in such a scheme, nor should sanctions based solely on efforts to address that risk. Sanctions should, however, be based on the principle of equity—that is, similar offenses should be punished similarly.

### *Rehabilitation*

Rehabilitation, along with incapacitation and specific and general deterrence, is a utilitarian philosophy of sentencing; that is, it rests on the principle that society is justified in inflicting pain and unpleasantness on its members only if some future good for the larger society is realized from the act. The good to be realized in sentencing is to produce by sanctioning better protection for the public by reducing the incidence of crime.

Rehabilitation specifically takes the view that the most productive approach to preventing criminal behavior is to diagnose and treat its underlying cause or causes in the individual. This view obviously has its roots in a particular theory of criminality: that criminal behavior grows out of some physical, emotional, or social problem of the individual offender.

Rehabilitation has as its aim the long-term elimination of recidivism by treating the problems of law-breaking individuals. To be effective, rehabilitation depends on several essential ingredients: first, a reliable means of diagnosing and assessing offenders for their needs; second, a prescription for responding effectively to the assessment or diagnosis; third, the resources to respond adequately to those needs; and fourth, the knowledge that responding in this way will affect the individual's proclivity to commit crime. The availability of resources is one of the most common problems with this approach: In the cases in which it is possible to determine what kinds of treatment, education, or other assistance

would benefit a given offender or groups of offenders, the resources are simply not available. Typically, there are inadequate resources for these services for the non-criminal population, making it that much harder to obtain them for offenders.

Because of its focus on the offender and his or her problems, rehabilitation places very little emphasis on the offense, other than what it might reveal about the perpetrator. In its purest form, a rehabilitative system would base sanctions on the needs of the offender rather than on the severity of the presenting offense. For example, in the case of two men convicted of murdering their wives, the one who has a serious mental health or drug abuse problem could be sentenced to a long period of confined treatment, while the other, a presumably sane college professor who acted in the proverbial "momentary fit of rage," could get a very light sentence.

The indeterminate sentencing structures that once ruled in most states, with their emphasis on "corrections" centers and institutions, and reliance on parole boards to determine when an individual was "ready" to be released (that is, cured), were at least partially based on a rehabilitative model of sentencing. Incapacitation within the institution was the desired aim for those the corrections system had not yet cured or could not cure.

### *Incapacitation*

The emphasis in an incapacitative approach is on preventing reoffending by restricting or disabling the offender, that is, by acting in some way to reduce or eliminate the opportunity for the offender to commit more crime.

There are different degrees of incapacitation. Extreme examples, such as the death sentence, are not uncommon. In some societies the hands of thieves are cut off, and in our own country judges have ordered both physical and chemical castration for sex offenders. Mandatory

life prison sentences are required in some states for so-called habitual criminals.

Other forms of incapacitation emphasize restricting rather than disabling the offender. Curfews, house arrest, day-reporting centers, and even the requirement of continuous employment or participation in work crews can be used to incapacitate offenders—that is, to make it more difficult for them to have the opportunity to commit crime.

Incapacitation is also measured by its length. A judge might consider it appropriate in a serious case to incarcerate an offender until he or she is past the crime-prone years, but determine that such a strategy is neither realistic nor appropriate for a young, less serious offender—for whom it would take many years of incarceration to age past that period. A judge might consider some other type of incapacitation, such as intensive supervision, for this young offender, but that sentence will still be too short to restrain the offender during the time he or she is most at risk.

Calculations of what degree and length of incapacitation are most effective are only partially scientific. Objectively developed instruments can rate the probability of reoffending for various sub-groups of offenders. However, criminal justice decisionmakers, whether judges or parole board members, rarely use that information by itself to reach decisions in individual cases. A risk-assessment measure is usually combined with other factors, such as the stakes involved in reoffending (Will this person pass more bad checks or rape another child?) and the costs versus the benefits of incapacitation at various levels.

Because incapacitation is based on predictions, information about the current offense is useful to the degree that it helps to demonstrate a pattern of behavior that is predictive of future behavior. Information about the offender's criminal and personal history is usually required for any objective assessment of risk.

## **Exhibit 8-1**

### **Policy Statement, Colorado Criminal Justice Commission**

*The following policy statement, developed by the Colorado Intermediate Sanctions Project Team and adopted by the Colorado Criminal Justice Commission, serves as an example of one jurisdiction's policy regarding the use of intermediate sanctions for adult felony offenders.\**

Criminal justice officials exercise discretion in rendering sanctioning decisions for adult offenders in Colorado. Those decisions shall be based on principles of equity, fairness, parsimony, and nondiscrimination, with concern for cost efficiency and satisfaction from the general public that justice is served.

Sanctions for adult offenders shall address, in order of priority, the community, the victims of crime, and the offenders. (1) For the community, sanctions shall pursue the objective of crime prevention. Such sanctions should incapacitate or control offenders when necessary, provide opportunities for offender rehabilitation to reduce future criminal behavior, and deter future criminal activity. (2) For victims and communities harmed by crimes, sanctions should be imposed that provide maximum opportunities for reparation. (3) For offenders, sanctions shall be imposed that provide retribution in proportion to the seriousness of crimes.

The effective use of incapacitation as a primary purpose of sentencing is dependent on several factors. The first is the availability of valid, reliable instruments for assessing risk among offenders. Unfortunately, the development of such instruments is a complex task that, even when done perfectly, does not produce the ability to make completely accurate predictions. The second is the ability to follow through on the predictions available—that is, to have the legal and ethical grounds, and the resources to act in accordance with the outcome of the assessment. Many types of offender groups that have a very high risk of reoffending fall into offense categories that simply do not justify an attempt to incapacitate them for the length of time that would be required to keep them from reoffending.

For most offenders under consideration for intermediate sanctions, their offenses and criminal histories will rarely justify either the degree or the length of

incapacitation that their risk might otherwise indicate. Decisionmakers often order or agree to a short term of incarceration or intensive supervision or participation in day reporting in the name of achieving incapacitation, even though that time is insignificant in the offender's potential crime career.

#### **Deterrence**

#### **General Deterrence**

General deterrence is the principle that underlies the notion of "making an example" of someone or of "sending a message" to a particular area or group by the way in which someone they might identify with is treated. The idea is to frighten the population of potential offenders into remaining law abiding. General deterrence uses either the fear of getting caught (publishing the names of drunk drivers or prostitution customers in the local paper), the probability of getting caught (random tax audits), or the

unpleasant consequences of conviction (the sanction itself) to prevent crime.

As an approach to overall crime prevention, general deterrence is based on assumptions that are hard to prove. Chief among them is that crime is the result of a rational choice made by a rational actor from among competing options with relatively equal payoffs. Another assumption is that we have chosen the right responses to make crime the less competitive or desirable option. General deterrence assumes that we have made those responses or consequences certain if the offender is caught, and that we know the best vehicle to deliver the message to its intended audience. It also assumes that citizens who obey the law do so out of fear.

#### **Specific Deterrence**

Specific deterrence takes the same fears—of getting caught and the consequences of getting caught—and uses them to induce law-abiding behavior in an individual. The notion is that it is possible to so scare an offender through the consequences of the original act that he or she will not reoffend.

A common example of sentencing to achieve specific deterrence is in shock probation programs. Typically, a judge will sentence an offender to some period of incarceration, let him or her serve a short portion of it (known as "a taste of the bars"), and then reconsider and suspend the remainder of the sentence. Some boot camp programs also operate on this principle, being located on the grounds of a regular prison in order to expose the presumably less hardened offenders to what may be in store for them if they mess up. Other boot camp programs make their regimens particularly unpleasant to discourage reoffending.

In misdemeanor courts, where judges have fewer options at sentencing, specific deterrence is a far more commonly employed sanctioning purpose than might be supposed. "A few days in jail" is a

\*Excerpted from *Position Paper on Criminal Sanctioning*, Colorado Criminal Justice Commission, Adopted December 18, 1992.

typical sentence designed to scare a first-time or frivolous (the crime that results from a prank or a dare) offender or to keep a prostitute off the street.

In practice, it is easy to confuse specific deterrence with retributive punishment, and many who argue for retribution are in fact seeking specific deterrence. Since the intent of specific deterrence is to make the experience of law breaking so unpleasant that one will never do it again, there are some common elements. For example, although sanctions designed to achieve specific deterrence are intended to achieve a good result, a sanction based on specific deterrence does not have to offer any other benefit; it does not have to be therapeutic or offer careful supervision; it simply has to be unpleasant.

As with other utilitarian purposes, specific deterrence is based on a particular understanding of human behavior. In this case, that future behavior is affected positively by the unpleasant consequences of past behavior. Since we certainly know how to create unpleasant consequences, the primary assumption on which specific deterrence rests is that it works.

#### *Restoration*

Unlike the other purposes of sentencing, which have a long history of debate and definition surrounding them, restoration has no commonly accepted single definition. There has been relatively little written about it and the understanding of its meaning in practice is still fluid. Therefore, its treatment here is necessarily tentative.

Restoration—sometimes also referred to as reparation—aims to restore the community to its state before the crime was committed. Like retribution, restoration looks at crime as a disruption of the peace or a rent in the moral fabric of the community, but restoration aims to repair the peace rather than punish the offender in response.

There are many aspects to restoring the community. To the extent possible, restoration seeks reparation to the victim for the damage done. It focuses attention on the conditions in the community that may have contributed to the commission of crime in the first place. Restoration seeks the safety of the community by preventing the offender, through rehabilitation, incapacitation, or deterrence, from reoffending, and finally, it offers the offender the opportunity to restore himself or herself to peace with the community by allowing him or her to make reparation for the offense.

In practice, choosing a sentencing scheme based on restoration requires establishing the order of priority for restoration in all cases.

#### *System Goals*

As managers of individual agencies and as policymakers for the larger criminal justice system, members of the policy group have a variety of concerns that reflect their stewardship of public funds and the public trust. In making decisions, they are seeking to achieve goals in this area as well.

The system goals that come into play when engaging the issue of intermediate sanctions are very common across jurisdictions. They include the following:

#### *Make Efficient and Effective Use of Resources.*

Making the best use of public monies is an obligation for everyone who serves in the public sector. That obligation has grown even more pressing in recent years as the demands for public services continue to outpace revenue. In the case of corrections, it requires that sanctions be tailored as carefully as possible to ensure that they provide only the supervision or services necessary to achieve their intended goal(s).

#### *Reduce Crowding in Corrections: Jails, Prisons, Probation.*

Whatever its goals, corrections can hope to achieve them only if it has the appropriate balance between the demand for services and the resources to meet that demand. There may be large influxes of funds for construction and new operating costs, but legislatures and other public bodies continue to make policy decisions that escalate the demand for space. That space may be in a jail, in a prison, or on the caseload of a probation or parole agency. Local officials are particularly hard hit in terms of managing jail costs and avoiding or resolving lawsuits.

#### *Process Cases Through the Court in a Timely Manner.*

The swift resolution of cases, whether civil or criminal, pending against individuals is a hallmark of a good justice system. Court delay has become a major problem in many courts around the country. Not only does delay affect the quality of justice, but it also can act as an albatross, impairing the court's ability to move forward on other issues or initiatives.

#### *Enhance the Credibility of Criminal Justice Agencies and Institutions.*

For a wide variety of reasons, the public has lost confidence in the ability of the courts, corrections, and other criminal justice agencies to deliver on their promises. Part of the problem may be in the promises themselves; nonetheless, our agencies have much to do to reach out to the public to restore confidence.

#### *Produce Resources That Offset Costs.*

As part of an effort to both conserve public funds and renew public confidence, many criminal justice agencies are looking for ways to generate resources. They may do this through improved fine collection, community work service by offenders, the payment of restitution to victims, or fees paid for probation supervision.

A jurisdiction may have additional system goals and objectives. The key thing about system goals is that they are just as critical to address as other goals in terms of policymakers' desire to honor them and to work toward their achievement.

#### ***Normative Values***

The system of criminal laws and criminal justice in this country confers an enormous amount of power on its decisionmakers: to intervene in the lives of citizens; to constrain or restrict their freedom of movement, freedom of association, and freedom of speech; to order their submission to treatment, payment of fines and fees, attendance at work, or urination on demand; and to permit the unlimited and unannounced inspection of their homes and workplaces. In directing and conducting the operation of the system, criminal justice policymakers are guided by rules and values that define the limits of that power in practice.

The values that guide individual case decisionmaking in criminal justice are likely to vary from jurisdiction to jurisdiction and from court to court within a jurisdiction. However, for the reasons articulated earlier, it is essential that a group that intends to develop policy regarding the use of intermediate sanctions agrees to articulate those values that will inform its efforts.

The following are some of the common values that guide policymakers and decisionmakers:

#### ***Proportionality***

Proportionality is the principle that a sanction should not be any more onerous, intrusive, or painful than warranted by the severity of the crime of which the offender is convicted. This is a critical limiting principle in the imposition of sanctions whose ostensible purpose is to do good, where the temptation to do A LOT of good is hard to resist.

Because proportionality is intrinsically linked to the idea of a hierarchy of offenses—that is, crime ranked by seriousness—it is typically associated with a retributive philosophy of sentencing. In fact, it is certainly possible to use such a ranking with any one of the sentencing purposes when the intent is to ensure that sanctions are proportional to the crime.

#### ***Equity***

Equity is the principle that similarly situated offenders are to be treated similarly. It specifically restrains us from responding to or sanctioning a subgroup of the offender population for a reason or in a way that is unrelated to their criminality.

Two examples of this principle are currently under discussion around the country. The first involves the passage in some states of laws that sentence possession or distribution of various amounts of crack cocaine more harshly than comparable amounts (in terms of use) of cocaine powder. One state supreme court rejected such laws as fundamentally flawed because the result was to punish one group of drug offenders very differently from another when the drug in question was essentially the same—only its form varied.

The second example concerns the use of particular probation conditions for women offenders in ways that are responsive to perceived gender-related needs (parenting classes, life skills management, grooming classes), rather than to the behavior associated with their criminality (drug treatment, job training, and so forth). A female offender convicted of a certain crime should be sanctioned in a way that is appropriate for the crime, not for the fact that she is a woman.

#### ***Parsimony***

Parsimony is the commitment to using the least intrusive and least drastic measures and the smallest possible amount of resources to obtain the desired objective in sentencing. That resource might be measured as the time of a probation officer, the duration of confinement, or the cost of treatment.

As with proportionality, parsimony is an important limiting principle in the design of intermediate sanctions: There is a tendency where intermediate sanctions are concerned for decisionmakers to decide that if a little is good, a lot is better. Unfortunately, in addition to wasting resources, the use of too many conditions, restrictions, and expectations on offenders in the community can create failure where success was intended. For many of the offenders for whom such sanctions are designed, a few clear expectations or requirements are far more productive in terms of changing behavior and building on success.

#### ***Humane Treatment***

A commitment to humane treatment means that in choosing sanctions, about how and under what conditions they are carried out, and about how they are organized, the preference will be to seek the most humane method to achieve the goals of the sentence or the outcomes of the program. To choose the most humane way is to avoid unnecessary or gratuitous humiliation, pain, and discomfort.

Forcing ourselves to consider humane treatment as a value when making decisions about sanctions is a powerful way to remind ourselves that the offenders for whom these sanctions are designed are not so different from us.

#### ***Objectives or Desired Outcomes of Individual Sentences***

For each of the traditional sanctioning purposes described above, there are concrete objectives by which to judge whether or not the sanction achieves the outcome that was intended. These objectives or desired outcomes are not the same as the purposes; they cannot be used interchangeably. They are indicators that help to translate philosophical concepts into practical, measurable terms.

While the objectives are not substitutes for the philosophical concepts, they are essential in defining success and marking failure. No sanctioning option or program can be devised without careful attention to clear, measurable objectives.

Objectives are also not the same as the elements of a program or a supervision strategy. The latter should be aimed at achieving the former. Objectives are one way to evaluate whether or not a program is carefully crafted; if an element of the program does not help to achieve the desired outcome, it should be eliminated.

Objectives fall into two categories: those that we want to look for and measure in an aggregate form in a sanctioning program, and those that we want to see and account for in individual cases.

Following are two examples of specifying objectives.

**Example 1:** A man has been convicted of robbing four people after dark at a neighborhood cash machine near the main transit terminal in the community.

The judge has ordered probation supervision until the man has repaid the individuals the money he stole from them. She has further ordered that he be placed on house arrest for 90 days.

The sentencing **purposes** here are clear:

- restitution of the victims, and
- short-term incapacitation of the offender to prevent future crime.

The sentence has the following **objectives**:

- repayment to the four victims of all of the money stolen, and
- restriction of the offender's freedom of movement during the time when he is not working.

The **program elements** aimed at meeting those objectives might include:

- efforts to get the offender a job (this could be done by a corrections agency as part of an officer's casework, by a special unit in the agency, or by a public employment service);

- monitoring his attendance at work (this could be done by telephoning his employer or by visiting the job site);
- supervision of his payment schedule;
- monitoring of his presence at home when he is not working (could be done through telephone contact, site visits, electronic monitoring, or some combination).

Because the objectives here are simple and clear, the agency charged with supervising the completion of the sentence can have confidence in adjusting the specific terms of the sanction to meet those ends. For example, if the probation officer believes that this individual needs training before he can get a job, the house arrest can be modified to accommodate training. If the probation agency must enforce compliance with conditions, it is told what objectives have to be met at the same time: that is, that restoration of the victims must be accounted for in any response to failure. The response should not, therefore, make it impossible or more difficult for the offender to work.

**Example 2:** In a similar case in another community, the offender is 18 years old and has been committing the robberies because of his cocaine addiction.

The judge in this case has ordered the offender to spend 28 days in an inpatient drug treatment program, followed by 90 days of followup outpatient counseling. He has further ordered that, following the inpatient treatment, the offender is to perform 20 hours of community service each week for the duration of his 18-month term of probation.

The sentencing purposes here are less clear than in the first example:

- rehabilitation (drug treatment) to prevent crime, and
- restoration of the community for the harm done to it through community service. The community service, however, may be intended as incapacitation or even as punishment.

As a result, the sanction's **objectives** are harder to specify:

- In the case of the treatment and counseling, the result sought might be the elimination of all cocaine use by the offender, or it might be a significant reduction in use.
- The result sought from community service is more difficult to discern:
  - a. If the purpose is punishment, the objective will be to make sure he spends 20 hours a week doing something unpleasant, demanding, or tedious.
  - b. If the purpose is restoration of the community, the objective will be to ensure that he spends the time making the best contribution he can to performing a needed public service (which might mean performing a task that is relatively pleasant).
  - c. If the purpose is incapacitation, the objective will be to maximize the restriction of his freedom of movement through the timing, organization, and supervision of the work assignment.

The **program elements** will include:

- inpatient drug treatment (offered in a private hospital, a corrections facility, or a public health facility);
- outpatient counseling (provided by probation officers who are certified addiction counselors, by a private agency, or by a public health service);
- community work service (managed through placements at other agencies, where the staff provides most of the supervision, through organized work service crews supervised by probation, or through a private agency that provides the supervision and the work placements).

Because the objectives of this sentence are not clear, it is harder for the probation agency charged with carrying it out to know with certainty how to make the necessary choices and adjustments. For

example, if the agency uses random urinalysis, how should it be used? To deter him from using drugs (for fear he'll get caught)? To catch him using drugs (in violation of the intent that he stop all drug use)? To assess how he's doing in reducing his dependence and use (to adjust the treatment he's receiving or to change the terms of probation)?

These examples make two things clear:

First, programs and elements of programs that have very different ends—and, therefore, are structured and operated differently—are often given the same name. This is true of community service, so-called boot camps, home detention, day-reporting centers, and many other sanctions.

Second, no corrections agency or probation department can create programs that meet the myriad individual purposes and objectives of however many judges sit on its bench, not to mention prosecutors and other public officials. Policy-makers must develop some common expectations about sanctioning programs that permit the agency that operates them to do so with a coherent set of goals and desired outcomes.

Much of the dissatisfaction with existing community sanctions can be attributed to these two problems. If a judge or a prosecutor agrees to a sentence that incorporates several months' attendance at a day-reporting center because that official believes that this offender must

receive rehabilitative services, but the center provides only supervision (that is, offering activities primarily to keep offenders in a single location where they can be watched), then the official is going to be dissatisfied with the sentence's outcome and is likely to lose trust in the operating agency. That same judge or prosecutor will be equally unhappy if he or she assumes that those sentenced to community service are out picking up trash and dead animals on the highway in striped uniforms, and then learns that the last offender so sentenced is shelving books at the local library.

---

## **Exercise 8-1**

### **Some Suggestions for Discussing and Reaching Agreement on Goals**

---

As noted in the introduction to this chapter, many policymakers exhibit scant patience with discussing goals of sanctions, choosing values, and defining outcomes. Perhaps these activities do not seem real in the press of daily decisionmaking. The costs of not reaching these agreements, however, are very real indeed.

Every policy group has a different character, a different level of tolerance for conceptual (as opposed to problem-solving) discussion, a different style of relating to one another. It is difficult, therefore, to suggest an approach that will work for all such groups. However, it is probably best to begin by tying the discussion directly to the interests of the policymakers as they make individual decisions. What follows are a few suggestions for beginning that work. Your group might review the three suggested approaches and select one approach, or a combination of approaches, that best suits the style of the group.

#### **Approach #1**

The purpose of this exercise is to give members of the policy group the opportunity to relate sanctioning purposes, values, objectives, and system goals directly to the dispositions of the kinds of cases that routinely come before the court.

1. Choose three typical cases that represent the majority of the kinds of cases (offense-offender combinations) that fill the docket of the court in your jurisdiction. Try to choose cases that are likely candidates for an intermediate sanction or for a split sentence. (If necessary, ask the probation or community corrections agency—or maybe the jail—for help in choosing.)
2. Distribute the cases to members of the group ahead of time. Ask each member to prepare a sentencing plan for each case, with a full description of all components. Ask them to describe why they have chosen the particular components or sanctions. What end will be served by this sentence? Are they looking for different goals with different parts of the sentence?

3. In the group, go through each case, having the members report their plans and their reasons. Note the responses on a flipchart.
4. Go over the list of reasons, identifying sanctioning goals, values, system goals or interests, and specific case objectives.
5. Discuss the results. Is there a mixture of goals, values, and objectives? Did members use the same sanctions for different purposes? How often did the same case result in the same sanction for different reasons?
6. On the basis of the discussion, can the group begin to identify some common goals, objectives, values, and system goals—at least as they might pertain to specific types of cases?

#### **Approach #2**

The purpose of this exercise is to familiarize policy group members more thoroughly with the purposes of sanctions by having them experiment and work with the concepts in their purest forms.

1. Divide the group into five small groups. Assign a specific sanctioning purpose to each group—retribution, rehabilitation, incapacitation, deterrence, restoration.
2. Each group should begin by agreeing on a definition and any requirements for its assigned purpose.
3. Give each group the same three cases as in Exercise #1. Have each group sentence the cases based on a pure approach to its sanctioning purpose.
4. As they discuss the sentences, members should note any concerns that they have about the result. (These should be concerns or cautions, rather than disagreements.)
5. Have each small group report its work to the larger group. Are there any surprises? What are the concerns?

## **Some Suggestions for Discussing and Reaching Agreement on Goals**

### **Approach #3**

The purposes of this exercise are, first, to give participants the opportunity to discuss the goals and values that they bring to the sentencing process and, second, to have each team examine how well the components of some commonly used sanctions achieve the outcomes that are desired for them.

1. Have the policy group identify the three nonincarcerative sanctions that they believe are the most frequently used in your jurisdiction.
2. Working individually, take the three sanctioning options and note for each one the specific outcome or outcomes that you are seeking if you recommend or sentence offenders to that option, or would be seeking if you did. If you identify different (more than one) outcomes for the same sanction, indicate if the outcomes are for different types of offenders.

3. Putting your individual responses aside for the moment, as a group, list the components of each sanction (e.g., reporting requirement, urinalysis—how often, scheduled or unscheduled, etc.). Indicate whether these components are always a part of the sanction or are available if desired. If the latter, who specifies their inclusion and when?
4. Using the flipchart, generate from the individual responses a list of outcomes for each sanction. Discuss the breadth of the responses.
5. As a group, discuss how ably or adequately the components of any of the sanctions might meet or achieve the desired outcomes.

## Developing a Common Frame of Reference

Peggy McGarry

---

**Introduction** This chapter examines the broad categories of descriptive information a policy group must have to create policy-driven intermediate sanctions. This is distinct from the information needed for monitoring purposes, which is described in Chapter 10, *Building an Information System to Monitor Sentencing*.

Using a planned-change model, your group has already addressed and begun to describe the desired ends toward which your efforts are directed. Here we begin the work of analyzing the point from which the group is starting: who and what make up the current system of sentencing and sanctions. Viewed another way, this information is crucial because you cannot solve a problem until you fully understand the factors that make it a problem and the forces that maintain it.

---

### **Establishing Baseline Information**

Establishing baseline information about your criminal justice system has two essential aspects: the information that is gathered and the process through which it is sought and assimilated. The information is, of course, crucial in and of itself. However, its usefulness to the policy group is directly related to the extent of the group's involvement in formulating the questions and arriving at the answers. Therefore, we have included several suggested approaches to involving the group in this activity.

The staff assigned to the group plays a vital role in suggesting avenues of inquiry and approaches to questions, in gathering and processing data, and in bringing into the discussion key actors whose perspectives may be missing. But staff members cannot substitute their own interest or insight for that of the policymakers, nor can they eliminate the need for policymakers to assimilate the information provided to them.

It is sometimes difficult for members of a policy group to recognize that they need the kind of information described in this chapter. Because of their day-to-day familiarity with the issues involved in sentencing and sanctions, many policymakers assume that they know all they need to know about this topic.

---

*Despite the importance of crime and justice to public budgets and to our quality of life, we seem content to rely on assumptions and common sense.*

---

Their assumption, unfortunately, is widely shared. We have for too long assumed that in the arena of criminal justice it is not necessary to apply the same standards of objective examination and inquiry that we bring to other public policy issues. Despite the importance of crime and justice to public budgets and to our quality of life, we seem content to rely on assumptions and common sense. Think of the impossibility of trying to construct a new highway or even a hospital without an environmental impact study or an analysis (or competing analyses) of the costs and benefits to the surrounding community, or of putting a new

drug on the market without subjecting the drug to a thorough testing process. For some reason, though, we seem to think that the ways we respond to drug-using offenders, for example, is less vital to our public health and well-being.

Nearly all participants in the Intermediate Sanctions Project have found that concrete information is a powerful tool for change. Policymakers are always surprised by the information because it challenges some of their strongest beliefs about how their jurisdiction's system operates. The challenge for the group's leadership is how to move the group forward by making use of this surprise. In the following discussion we examine some reasons why this work is important, define the specific types of information needed, and describe several methods for obtaining the information.

### **Why Is This Work Important?**

- *It is critical to understand the causes of a problem before beginning an effort to solve it. Establishing baseline information can be seen as the analysis portion of a problem-solving effort.*

Addressing the twin issues of sentencing and sanctions is a particularly complex undertaking. All three branches of

government are involved in sentencing, and each case has been handled by a number of people and agencies by the time it reaches disposition. Although carrying out a sentence is typically the direct responsibility of the executive branch, it can involve all three branches as well as private-sector agencies. The policy group must understand the process in all of its complexity to learn what stands between the ideal and what currently exists.

**• Individual policymakers have a limited view of the system and those affected by it.**

One objective of the policy group is to overcome the narrow frames of reference of its individual members and build a shared understanding of the system in a particular jurisdiction. The activities described in this chapter enable the group to construct a common frame of reference based on hard data rather than on assumptions and extrapolations drawn from individual experiences.

**• To match sanctions with the offenders for whom they are most appropriate, the group must know who makes up the offender population in its jurisdiction and the capacity and purposes of existing sanctions.**

Developing effective and efficient intermediate sanctions requires matching goals and desired outcomes with the sanctioning components most likely to achieve them and the population for whom they are suited.

**• Developing policy to guide the just and appropriate use of sanctions requires a complete knowledge of the sentencing process in your system.**

A detailed understanding of the sentencing process can tell the policy group where and how to intervene to produce the desired impact on the jurisdiction's sentencing practices.

### **What Are the Key Categories of Information?**

Information must be gathered in four key categories at this stage:

1. the sentencing/disposition process;
2. numbers at each key decision point;
3. existing sentencing options in the jurisdiction; and
4. offender profiles by disposition.

#### **1. The Sentencing/Disposition Process**

The policy group should begin by describing the *formal sentencing process*. Such a description must include:

- the sentencing structure and the distribution of discretion among the major decisionmakers;
- laws that mandate sentences and/or limit the discretion of any actor, and the requirements for invoking them;
- sentencing laws that permit broader discretion in certain types of cases, and their requirements;
- the steps involved in taking a case from arrest through disposition (for each of these steps, include the agency and specific actors responsible, the decisions required, and the options available); and
- the information about the case available at each decision point, and its source.

Sentencing decisions are usually the result of much more than just the laws and formal policies of a jurisdiction. Accounting for these informal influences is vital to truly understanding how sentencing happens in your jurisdiction. *Informal influences on the sentencing process* are different in each jurisdiction, but they may include:

- court orders relating to jail and/or prison population levels;
- jail and/or prison construction efforts;
- funding for community corrections/probation programs;
- the relationship of the court to probation, including the level of trust, support, and confidence;

- the presence of an adequately funded public defender's office;
- policies in the prosecutor's office on the use of nonincarcerative sentences;
- the power and influence of the prosecutors in plea negotiations; and
- the visibility of private agencies/providers to the bench.

#### **How to Gather the Data**

Staff can prepare **brief** reports that describe the important features of the state's sentencing laws and structure. The policy group should review these initially as a background for other discussions; thereafter, these reports should be used as reference materials.

The remaining information on the jurisdiction's sentencing process should be developed by the group as a whole. The best way to do this is for the group to walk through the steps in the process from arrest through disposition and complete a "**map**" or **flow chart** of the process. (An example of a flow chart is provided as Exhibit 9-1.)

At each decision point, the group should answer these questions:

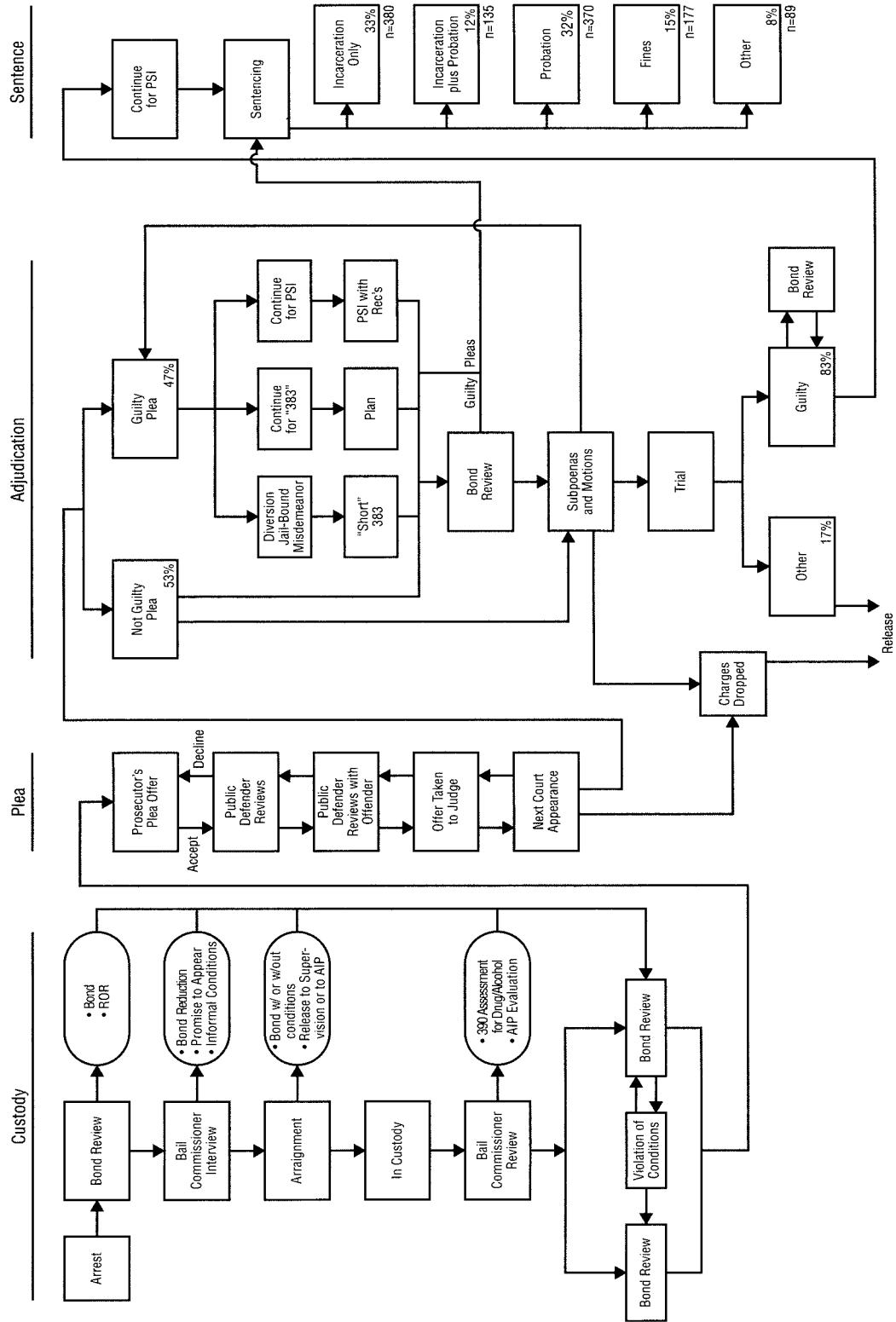
- What are the decision options?
- Who are the decisionmakers?
- Who or what has influence on that decision, either overall or case by case?
- On what information is the decision based? Where does it come from and is it passed along?
- What are the unspoken rules that guide some of these decisions?
- Are there articulated rules or policies for any of them?

If possible, use sheets of newsprint or butcher paper to diagram this map or flow chart as a group.

It will probably take several sessions to complete a truly multidimensional picture of the sentencing process in a

**Exhibit 9-1**

**Flow Chart of Bridgeport Process**  
**Data From April 1, 1991–June 30, 1991**



jurisdiction. Members of the policy group may disagree on some items, and it may be that no one in the group will know the answer to some questions, in which case you may have to add new members to the policy group. Creating this picture is, however, a key task for the policy group.

In the context of meetings of the whole group, policymakers may be less than forthcoming in identifying the informal rules, influences, or practices affecting sentencing. If that is the case, staff can interview knowledgeable individuals privately and bring the information to a subsequent meeting for discussion and confirmation. It is entirely possible that an assistant prosecutor or a trial judge knows far more about the way things actually work in a jurisdiction than does the elected prosecutor or the presiding judge who sits on the policy group. (A sample interview format is contained in Chapter 11 that can be used as a guide to conducting these interviews.)

## **2. Numbers at Each Decision Point**

Once a map or flow chart of the sentencing process is complete, the next stage is to understand the power of each decision point as a gate to the rest of the system. To gather this information, the group will need access to actual numbers over a specific period of time—three months, six months, or a year, depending on the availability of data.

The policy group will need data to answer at least the following questions:

- How many cases came into the system through arrest?
- At each decision point, how were the cases divided among the possible decision options? How many were in each option?
- How were the cases divided among the possible final dispositions?
- What was the average length of time between each step in the process?

### *How to Gather the Data*

Obtaining these numbers is no simple matter. The office of court administration is the likeliest place to start, but the task will probably require data from a number of sources: the sheriff or police, the jail, the prosecutor's office, the pretrial services agency, probation, and the court. (Exhibit 10-1, contained in Chapter 10, is an excerpt from a report produced by Sacramento County, California, demonstrating the method that jurisdiction followed to detail the types and sources of data in the jurisdiction.)

A staff working group of members of the information or planning staff from each of the relevant agencies can be helpful. This group can determine the best way to collect the data and present them in a useful format.

If it is necessary to collect these data manually, choose a relatively short time period, such as three months, which will provide a snapshot of how the system functions.

### *How to Present Data to the Policy Group*

The most illuminating way to portray the data is by showing the numbers at each decision point identified in the sentencing/disposition process. However, there are several possible approaches to actually presenting the resulting data to the group:

- Staff can prepare the data and simply present them to the policy group. The overlay of numbers on the flow chart has a powerful effect on policymakers; the actual figures are rarely what they assumed. The surprise can offer a useful opening to a full and frank discussion of the implications of these numbers for the operation of the system.
- Another way to structure that discussion is to have each member of the group identify what is most surprising or unexpected to him or her about the numbers.

- If members of the group are comfortable with one another, begin by having each member write down his or her "guess" about the numbers or percentages at each decision point before the data are presented. Then ask them to identify the areas of greatest differences between their guesses and reality.

## **3. Existing Sentencing Options**

A critical stage in the development of a common frame of reference is understanding the array of existing sanctioning options. In developing descriptive information about the array of existing options, the team should make a list of all existing sanctioning options that have been used as a sentence, including programs and services not necessarily originally developed as sanctions. For each one, the policy group needs to know the following:

- What is its capacity and actual rate of use?
- What are the characteristics of its target population? Of its actual population?
- What are the components of the option or program? (What actually goes on, what services or programming are provided, how much supervision, of what kind?)
- Have all elements of the program been implemented as described?
- Do all participating offenders receive the same level of service and supervision?

*"The lack of accurate, quick and meaningful data is most frustrating to the group. Each department's information system has severe limitations. Policy development without this information becomes more of a guessing game."*

—Mark Carey, Director of Community Corrections, Dakota County, Minnesota; excerpt from the *Intermediate Sanctions Project Newsletter*

- What are the limits on the use of the sanction? (Is it inappropriate for certain types of offenders, for certain durations of sentence?)
- For what purpose or purposes is it designed or can it be used, e.g., surveillance, rehabilitation, punishment? Which features make it appropriate for each purpose?
- Who controls access to the program? How do most offenders end up in the program? (Can judges sentence directly, or does a corrections agency have to make the assignment? Does the program management have to agree to take an offender? Can probation or parole refer in lieu of a violation? Are there pretrial cases?)
- Who among those who have access is actually using it?

#### *How to Get This Information*

The best way to get this information is to conduct an interview by phone or on site with the director or manager of each program. Request any available statistical summaries on the program's population. The probation agency might be able to provide much of the information. However, if the task seems overwhelming, the best approach is to divide it up among the staff from several of the policy group's member agencies. If they all use the same interview format and questions, the results should be sufficiently uniform.

If the policy group is relying on information provided by the program itself, check with those who use the program—judges, probation officers, prosecutors, or defense attorneys—to learn about their experiences with it. No one wants to be embarrassed at a meeting by presenting information that turns out to be inaccurate or misleading. (See Exhibit 9-2 in this chapter for the approach one team chose to take to gain a full understanding of the current range of intermediate sanctions.)

#### *Exhibit 9-2*

##### ***Analysis of Intermediate Punishment Profiles Sacramento County, California***

*The following excerpt from a report\* prepared by the Technical Services Group, a subcommittee of the Sacramento Criminal Justice Cabinet, details the process that one team underwent to gain a more comprehensive understanding of the county's current use of intermediate sanctions.*

Part of the initial work of the Intermediate Punishments Committee has involved development of a profile for the intermediate punishments and sanctioning options currently in use in the Sacramento criminal justice system. The profile information is intended to assist the Committee in evaluating the effectiveness of the use of community resources under the current system.

The first step undertaken in the development of the profile involved the identification of each intermediate punishment/sanction currently being used for adult offenders. A total of nine categories of intermediate punishments and four categories of diversion programs were identified by criminal justice agencies. The sanctions ranged from traditional probation to jail or prison incarceration.

The second step in the process of profiling these intermediate punishment options involved the development of a structured Sanction Profile Survey Questionnaire. The questionnaire was designed to secure information about each punishment sanction, including (a) target offender populations, (b) program goals and objectives, (c) screening and omissions process, (d) number and characteristics of referrals, (e) program requirements and components, (f) staffing patterns, (g) funding sources and program costs, (h) statistical and evaluation data, and (i) staff observations about program effectiveness.

Using the Sanction Profile Questionnaire as a guide, individual members of the Intermediate Punishments Committee contacted and arranged for an interview with administrative staff assigned to each sanctioning option or program. Information compiled during the interview was recorded on the questionnaire and returned to the Technical Services Group for analysis.

A summary analysis of the responses to the questionnaire, as well as the completed detailed information collected through the interview, has been incorporated ....

#### *How to Present It*

This information is presented in two complementary ways: on a summary table and in a narrative on each sentencing option.

- *Sentencing option table.* In a summary form list sentencing options by their chief aim or activity, their sec-

ondary aims and attributes, and their capacity, availability, and limitations.

- *Narrative descriptions of sentencing options.* Provide a description of each sentencing option. Address each of the questions listed above under Existing Sentencing Options in a narrative form.

\**Analysis of Intermediate Punishment Profiles*, Prepared by the Technical Services Group for the Sacramento Criminal Justice Cabinet, pages 1-2, 1992.

#### **4. Offender Profiles**

These data are absolutely critical to any informed discussion about intermediate sanctions. Whether analyzing the failure of current sanctioning options to meet expectations or planning for new or expanded sanctions, the policy group must know in concrete terms **who its offenders are**. Even more than in other areas, policymakers will assume that they **know** who the offenders are and what happens to them.

The leadership of the policy group has an important and early decision to make in this area: It can direct staff to begin collecting the data that it determines are central and then present them to the group, or it can take the slower but more rewarding route of having the group define what it wants to know about the offender population. The decision may rest on the urgency of the situation and the jurisdiction's ability to generate data quickly. One way to persuade the group to ask their own questions is to have staff do some limited research on a particular

population category in which the policy group has expressed interest. The presentation of even a little hard data usually will provoke an interest in having more.

It would be useful at this point to refer to Chapter 10, Building an Information System to Monitor Sentencing. Profiling offenders by disposition *is* monitoring information, and in Chapter 10, Kay Knapp discusses in detail how to determine the content of monitoring information, and where and how to collect it.

## **Developing a Common Frame of Reference**

---

### **I. Developing a Common Frame of Reference Means:**

- building a picture of how sentencing works now (i.e., gathering baseline information); and
- building the picture together, as a group, so that the understanding is shared.

### **II. Establishing Good Baseline Information Is Important:**

- A.** It is vital to analyze the causes of a problem and the forces that keep it a problem before trying to solve it.
- B.** Sentencing practices are the result of a dynamic process that must be understood in its complexity if the group is going to change its outcome.
- C.** The group needs objective, hard data on offenders in order to match sanctions to offenders.

### **III. Building a Common, Shared Understanding of How Things Currently Work Is Critical:**

- A.** Each policymaker has a restricted view of the system based on his or her role in it; no one has a truly global view.
- B.** Common action must proceed from common knowledge.

### **IV. Key Categories of Information to Be Covered in Establishing Baseline Information Are:**

- A.** the formal sentencing structure and process, the informal influences and practices surrounding that process, and the key decision points and decisionmakers;
- B.** the number of offenders entering, leaving, and remaining at each decision point;
- C.** an inventory of existing sanctioning options, with capacity, purpose, population, and other analytic and descriptive information; and
- D.** profiles of the offenders in the system by disposition.

### Building an Information System to Monitor Sentencing

Kay A. Knapp

**Introduction** Chapter 9, *Developing a Common Frame of Reference*, deals with information primarily in the context of the need to describe current processes and operations of the criminal justice system. Chapter 12, *An Analytical Approach to Targeting*, addresses the use of information in matching offenders to desired sanctions.

In this chapter, we distinguish the various uses of the term “information” and describe the development and implementation of an effective system to monitor sentences.

Despite the critical role that adequate information plays in devising sentencing policy and planning programs, most jurisdictions lack an information system that is useful to the intermediate sanctions process. The policy team itself may have to take on the task of developing such a system.

The purpose of this discussion is to demystify the development and implementation of a monitoring system and consequently empower policy teams to create an effective sentence monitoring system. The discussion is geared toward monitoring sentences in courts of general jurisdiction.

#### **The Term “Information”**

The term “information” is frequently heard in discussions of sentencing, the use of intermediate sanctions, and the allocation of correctional resources. The term takes on different meanings in various contexts.

#### **Decisionmaking Information**

In the context of sentencing, information takes on a particular meaning. For example, judges need information in order to determine whether a particular offender is appropriate for a particular intermediate sanction. This type of information is **decisionmaking information**; it is often presented to the judge in narrative form via a presentence investigation report, a pretrial assessment, or a chemical dependency evaluation.

#### **Evaluation Information**

The term information also arises in the context of “what works?” What programs are effective for which groups of offenders? Is one program implementation strategy more effective than an alternate strategy? These questions call for **evaluation information**.

Information for **process evaluation** includes data on whether the program intervention occurred. Were the designated community service hours actually served? Did the offender attend the job training sessions? Were all of the training sessions actually held?

Information for **outcome evaluation** includes data on whether the program had the desired effect. If job training resulting in offender employment was the program goal, how many offenders from the program got jobs? If drug and alcohol abstinence were program goals, how many offenders who completed the program remained drug- and alcohol-free?

Data relating to evaluation information are usually gathered from program documents and files and reported in statistical format. The data may either be entered on a computer or maintained manually, depending on the volume of cases.

#### **Monitoring Information**

Another context in which the term “information” is used is to describe general attributes of the offender population. How many offenders in the jurisdiction are in the pool of those who meet existing program criteria? How many offenders would be in the pool if those criteria were changed? What sanctions are imposed on offenders in the program-eligible pool who do not go into those programs? This is **monitoring information**.

Monitoring information includes key data on offenses, offenders, and case processing that is collected routinely on all cases. When the information from individual cases is aggregated in an automated monitoring system, it makes possible both the development and evaluation of policy.

#### **Policymakers and the Development of a Monitoring System**

Monitoring information is crucial to rational resource allocation, program development and implementation, and program monitoring. It is also a necessary foundation for good program evaluation.

Despite the obvious need for this kind of information, most jurisdictions lack an effective monitoring system.

In discussions about monitoring information, some policymakers are put off by an image of mainframe computer management information systems that evoke a sense of mystery, intimidation, annoyance, or frustration. An effective monitoring system, however, need not (and probably will not) take this form.

An efficient and effective monitoring system is responsive to the needs of policymakers for the particular information necessary to make policy in a given area. It is important, therefore, that policymakers be integrally involved in the design of any new or interim system that grows out of this process. As unaccustomed as they might be to doing so, judges, county commissioners, probation officials, and prosecutors can work with technical staff—clerks, analysts, and planners—to develop the best system to meet their needs.

### ***Key Issues in the Development and Implementation of an Effective Monitoring System***

Several issues are related to the development and implementation of an effective monitoring information system:

- What kinds of information should be collected routinely?
- How does a jurisdiction decide which items to collect?
- Who should capture the information?
- How and where should the information be recorded and maintained?

### ***The Kinds of Information Needed***

An effective monitoring system must include, for each case in the jurisdiction, key information on the offense, the offender, and case processing. (A “case” in the monitoring system is assumed to be an individual offender.)

- **Offense characteristics** include statutory differentiations such as the most serious conviction offense and any statutory penalty constraints that render the offender ineligible for intermediate sanctions. Relevant offense characteristics that are not

always determined by the statutory offense definition—such as type of victim (person, business, institution); relationship of victim to offender; victim age; weapon use; physical injury; property loss; and offense relationship to drugs—are also useful in a sentence monitoring system.

- **Offender characteristics** include

gender, age, race, criminal record, dependence on drugs or alcohol, education, employment, and mental health. Records of prior treatment or other interventions might also be useful to help define an offender’s eligibility for certain programs.

- **Case processing information**

includes the initial charges in the case, plea negotiations, and sentence dispositions and duration. This information is needed to determine how cases in the jurisdiction are handled currently and to monitor changes after intermediate sanctions have been implemented.

### ***How to Decide What Information to Include***

There are four steps involved in determining what information to include in a monitoring system. The first is to generate the initial list of all desired factors. The next steps involve determining what specific information might be available to capture the factors in an automated monitoring system and whether the cost of capturing a particular factor is worth the benefit of having that information available in an automated monitoring system.

#### ***1. What do policymakers want to know?***

The experiential knowledge of judges, probation officers, prosecutors, and defenders is the best place to start to define what information would be most useful. What characteristics does the judge currently consider in deciding the disposition of a particular case? Are there types of cases for which some type of intermediate sanctions might be appropriate, but the jurisdiction currently lacks such programs or does not have adequate space in existing programs? What are the

offense and offender attributes of those types of cases?

A thoughtful discussion based on experience will yield a substantial list of factors that might be useful in an automated sentence monitoring system.

#### ***2. Where does information regarding a factor currently reside?***

At the beginning of this chapter we referred to **decisionmaking information**, meaning the narrative and other assessments prepared for decisionmakers to help them make bail and disposition decisions and set conditions at various stages of processing. Specific items for an automated monitoring system can usually be captured from these decisionmaking information documents. Bail assessment forms, presentence investigation reports, and chemical and alcohol abuse assessments are common resources from which information for a monitoring system can be drawn. (Exhibit 10-1 contains an excerpt from a report produced by Sacramento County, California. This report reflects the team’s efforts to gain a full understanding of what information is available in their system, where it is, and how it is used.)

#### ***3. How objective and how reliable is the information?***

If the policy group is going to rely on information, make sure that individual items are gathered consistently, with few blanks. Objective elements are easier, and therefore less expensive, to capture consistently and reliably than relatively subjective ones. Elements such as remorse of the defendant, level of the victim’s injury, or relationship of drugs to the offense are relatively subjective. Other elements, such as the age of the victim, the relationship of the offender and victim, and the statutory definition of the offense, are more objective.

The relative objectivity of elements should be considered in deciding what to include in the monitoring system, but objectivity is not necessarily a definitive criterion. It is sometimes important to include relatively subjective factors in a

system. If the items are structured carefully, some subjective information can be captured reliably. It is also possible to use surrogate, objective measures to approximate a subjective element. For example, whether an offender went to trial or pled to an offense is not the same as remorse, but it is likely that most offenders who went to trial did not admit their guilt and therefore did not express remorse.

#### **4. How well does a factor differentiate among cases?**

The purpose of the system is to identify major relevant differentiations among cases so that, for example, the policy group can identify pools of offenders eligible for specific intermediate sanctions. An automated monitoring system that captured every relevant piece of information on the offense, the offender, and the processing of the case would be prohibitively expensive and cumbersome.

Thus, one consideration in deciding whether to include a specific element is how well it differentiates among cases. If it is a unique attribute that applies only to a very small number of cases, it might not be an item that should be routinely collected in an automated monitoring system for all cases.

(With major differentiations of cases available, it is relatively easy to get more specific information, if needed, by pulling a sample from a relevant subgroup and checking those cases for the more specific item.)

#### ***Deciding Who Should Record the Information in the Monitoring System***

This design issue is central to the success or failure of an automated monitoring system. A good monitoring system should be efficient. The person who records a piece of information must have immediate access to it—must, in effect, already know it. Then it becomes a matter of quickly and easily transferring that knowledge to a well-designed form, on paper or on a computer screen. The information can be recorded at each stage in the system or all at once.

Depending on the case-processing flow in the jurisdiction, some information could be recorded at the **bail assessment stage**, other information at the **presentence investigation report stage**, and the remaining information at the **sentencing stage**. This approach requires careful design of the system and some way to ensure that information is recorded at each designated point in the process.

Another approach is to ensure that key documents, such as the bail assessment and judgment order, are routinely part of case files so that all necessary information is readily available to someone who will record it at the end of the process. It is possible for a number of people in the system to be responsible for recording the information:

- If presentence reports are prepared routinely, the **probation officer or writer of presentence investigation reports** is sometimes in a good position to record characteristics of the offense and the offender, as well as case-processing information. Depending on when the information is recorded, the probation officer may know the sentence disposition and duration as well.
- **Prosecutors** have considerable knowledge about their cases and could record much of the information for the monitoring system, especially if an efficient form or checklist were provided.
- **Judges** could record key information. Although it is unlikely that staff would want to burden judges with the responsibility for recording monitoring information on an ongoing basis, it might be possible to do so on a pilot or trial basis for a limited period, such as three months.

#### ***Choosing How and Where to Maintain the Information***

Your jurisdiction may already have a useful, or potentially useful, automated information system that includes many of the elements needed in the monitoring system. If so, it may be relatively easy

and inexpensive to revise that system to take account of the additional elements.

In many local jurisdictions, however, there are serious obstacles to revising an existing mainframe system. In that case, unless the volume of cases is prohibitive, the automated monitoring system can be designed and implemented on personal computers. Because an automated monitoring system includes a limited number of key differentiations, it is easy to use existing programs such as Lotus 1-2-3, SPSS Data Entry, or SPSS-PC to manage the information.

Depending on the availability of computers and personnel, the monitoring information can be entered directly into a computer without creating any delay between recording and automating the information. If computers are not available to those responsible for recording, the information can be recorded on a bar-coded paper form and automated by using a bar-code wand or recorded on a paper form and forwarded to clerks to enter the data.

#### ***A Trial Period for Testing a Monitoring System***

It often makes sense to implement a monitoring system on a trial basis before making it a permanent part of the jurisdiction's criminal justice system. A trial implementation of a monitoring system can serve a number of purposes. First, a three-month sample of monitoring information can provide information about offenders and sentencing practices that can be used to examine program eligibility pools and other policy development issues. Second, the trial period can be a test of the availability and reliability of items designated for the automated monitoring system prior to full-scale implementation. Third, a trial period provides an opportunity to determine whether the data elements being collected are in fact the most important ones for your jurisdiction. Finally, a trial period ensures that the system is working and that the information is being collected and maintained in the most efficient way possible.

**Exhibit 10-1**

**Sacramento County Criminal Justice Data Inventory Report**

*The following is the opening narrative of a report produced by the Sacramento County Technical Services Group, a subcommittee of the Intermediate Sanctions Team. The report demonstrates the method that this team used to understand the use of data in its jurisdiction; more specifically, the team wanted to know what information was collected, how it was collected, who used it and for what, and how it might be used differently. Upon completing this analysis, the team had a clear understanding of what types of analytical information were and were not available, given the current structure of the data-gathering system.*

**Background**

In order to develop an understanding about the type of data justice agencies compile concerning adult offenders and case processing dispositions, the Technical Services Group conducted a data inventory survey. Each Sacramento County criminal justice agency was asked to examine its data sources and provide summary information about the following:

**Data Survey and Inventory**

**Reporting Agencies**—The Sheriff's Department, District Attorney, Public Defender, Municipal Court, Superior Court, and Probation Department were requested to complete the information and Data Survey Form. Departmentwide information and data for each operational unit or division associated with the agency were included in the response.

**Data Sources**—The survey was concerned with identifying those data sources (reports) that contain demographic case processing, dispositional, and other information about the handling of adult pretrial and sentenced offenders. For each data source, agencies indicated if the information identified pretrial felony and misdemeanor cases and/or sentenced felony and misdemeanor cases.

**Name of Report**—The specific title or name associated with each report or data source was identified.

**Reporting Periods**—The survey identified whether the information contained in the data source (report) is compiled and reported on a monthly, calendar year, or fiscal year basis. Information that could only be developed for a specific point in time was also requested.

**Collection Method**—The survey asked agencies to indicate whether the information included in the report is compiled manually or developed through an automated records system.

**Most Recent Reporting Period**—The most recent available reporting period for the report or data source was identified. Departments also indicated any previous years for which similar data or reports were available.

**Source Documents**—Departments provided specific information that identified the primary source documents from which the reported data had been developed.

**Report Distribution**—The survey identified the organizational units or agencies that receive the published information.

**Computer Analytical Capability**—If the information contained in the report was developed from an automated source, the department indicated if the computer software had the capability to be programmed to analyze multiple data elements included in the data base (ad hoc reporting capability).

**Case Profile Data**—Each data element or discrete information variable that was included in the data source (report) and that could be used to describe the adult case was identified.

**Case Processing Dispositions**—Specific dispositions for cases included in the data source (report) were included.

**Case Processing Times**—Information included in the data source (report) that described the length of time associated with the processing of various case dispositions used by the agency was examined.

**Other System Information**—Departments were asked to show the full range of data elements (case-specific information) contained in their reporting system and attach listings of the specific data elements or codes for the information.

Departments were asked to include a copy of the most recent report (data source) identified in the survey form.

**Exhibit 10-1 continued**

**Questions Existing Data Can Answer**

The analysis of data systems has revealed that the information criminal justice agencies currently collect is primarily of the type that enables departments to determine the volume and work load of adult offenders being processed through the justice system. Much of the information is designed to help facilitate administrative and operational functions associated with the disposition of offender populations. The statistics will provide, for example, a summary of the absolute number of felony and misdemeanor cases and dispositions involving arrests, jail bookings, releases, and court dispositions. Listings of cases being processed during selected reporting periods are also available.

The data can provide indications of the local criminal history characteristics of offenders, including probation and parole histories. Gender, race, age, and other demographic data can also be developed for cases at selected decision points in the criminal justice system. Limited information (most of which is not automated) is available about offenders' family, income, employment, education, mental health, medical, substance abuse, and prior treatment experiences or needs.

Only about half of the information and data that criminal justice agencies use is provided by automated systems. Much of the information must be tabulated from logs and other manual reporting systems. A significant amount of the information contained in the automated or manual systems has been developed in response to reporting requirements stipulated by state and federal agencies.

As a rule, it appears that automated information systems do not have ad hoc reporting capability that can be used to generate new reports about offender characteristics, case-processing dispositions, etc. Some systems, like the Jail Information Management System (JIMS), contain extensive information variables about offenders. Special programming, however, is required to access the information in cross-tabular formats, which may be different from the reporting formats preprogrammed into the system. Overall, the data inventory has shown that planning information that focuses on correlating selected offender characteristics with case processing decisions or sentencing dispositions must be developed through sampling methodologies involving individual case files, logs, or other hardcopy records. Examples of the types of questions the data system can answer are given below.

**Examples of Questions That Can Be Answered:**

- Number of adults arrested for felony robbery crimes or misdemeanor assault and battery offenses.
- Number of 25-year-olds arrested and booked into the county jail on spousal abuse crimes.
- Number of female adults interviewed by Pretrial Release Program and granted an O.R. release by the courts.
- Identification of cases assigned to a particular probation officer handling intensive supervision caseloads.
- Identification of offenders appearing in court today for the P.M. calendar in Department A.
- Identification of inmates housed today on the seventh floor in Pod #1 at the main jail.
- Indication of how many felony cases Superior Court processed during the month of May.

**Examples of Questions That Cannot Be Answered:**

- Number of arrests occurring outside Sacramento County.
- Number of adult probation violations during the past year for drug use or sales offenses.
- Number of drug offenders previously convicted of serious violent crimes.
- Age and ethnic breakdown of inmates detained in the county jail or probationers receiving intensive probation supervision services.
- Number of Rio Consumnes Correctional Center (RCCC) sentenced prisoners convicted of drug violations who have participated in some form of chemical dependency education or treatment program.
- Number of prisoners in the Work Furlough Program who have serious literacy problems or have not graduated from high school.
- Number of prisoners booked into the county jail who were unemployed at the time of their arrest.

***Exhibit 10-1 continued***

***Examples of Questions That Could Be Answered Based on Review of Sample Case Histories:***

- Number of RCCC inmates who have identified mental health illnesses or serious substance abuse problems.
- Number of adult offenders abused as children.
- Number of female sentenced prisoners who were receiving public assistance prior to their conviction and commitment to RCCC.
- Number of first-time offenders arrested for felony burglary crimes who pled guilty and received a sentence of probation rather than incarceration.
- Number of offenders needing education and remedial programs.
- Number of offenders needing employment preparation programs.

The remainder of this report shows the typical data source, target cases, and description of information included in the data inventory responses provided by each criminal justice agency.

**Exhibit 10-2**

**King County, Washington, Misdemeanor Sentencing Study**

*The following shows how another project jurisdiction determined the sources of its data. In preparing for a sentencing study, King County developed a list of each data element that would be needed to conduct the study and then determined the location of the data.*

**Source of Data Items**

DISCIS = District Court Information System  
MCIS = Municipal Court Information System  
SIP = Subject In Process (jail information system)

<b>Data Item</b>	<b>Data Source</b>
1. Name	DISCIS/MCIS/SIP
2. CCN (identification number)	SIP
3. BA (identification number)	SIP
4. Cause	DISCIS/MCIS
5. Date of Birth	DISCIS/MCIS/SIP
6. Sex	DISCIS/MCIS/SIP
7. Race	DISCIS/MCIS/SIP
8. Court	DISCIS/MCIS/SIP
9. Type of Court	DISCIS/MCIS
10. Date of Court Calendar	DISCIS/MCIS
11. Judge	DISCIS/MCIS
12. Crime(s)	DISCIS/MCIS/SIP
13. Expedited Felony Status	DISCIS
14. Revocation Status	Court Docket
15. Plea/Trial Status	DISCIS/MCIS
16. Other Holds	SIP
17. Type of Disposition	DISCIS/MCIS
18. Stage in Criminal Process at Which Sentence is Made	MCIS
19. Sentence Length	DISCIS/MCIS
20. Availability of Presentence Report	Court Docket
21. Prosecutor Recommendation	Court Docket
22. Terms of Probation	DISCIS/MCIS
23. Use of Alternatives	DISCIS/MCIS
24. Criminal History	DISCIS/MCIS
25. Criminal History Available to Judge	MCIS
26. Length of Stay	SIP
27. Presentence Jail Time	SIP
28. Postsentence Jail Time	SIP
29. Good Time	SIP
30. Jail Location	Classification
31. Balance Suspended	DISCIS/MCIS
32. Concurrent Sentence	MCIS/Docket

---

## **Exercise 10-1**

### **Developing an Effective Monitoring System**

Adequate information plays a critical role in devising sentencing policy and planning intermediate sanctions programs. Despite this, many jurisdictions lack meaningful data to support the policy development process. The policy team may have to take on the task of developing a monitoring system.

#### **Objectives**

This exercise is designed to help the policy team think through the components of a useful monitoring system.

#### **Instructions**

1. The first step in determining the components of your monitoring system is gaining an understanding of what you want from it when it is in place. As a group, brainstorm a list of questions that you would want your new monitoring system to answer. Record your list of questions on flipcharts and post the pages around the room. Below are some questions to help you get started; use the ones that are appropriate for

your jurisdiction, and then keep going until you have covered the critical ones:

- What kind of offenders are in our jail?
  - In what ways is the sentenced population in our jail different from the population we have on probation?
  - How many residential drug treatment slots are available to us for sentenced offenders, and how many do we need?
2. For each of your questions, identify the **information points**, or **data elements**, that are needed to answer the questions. For example, if one of your questions is “What type of offenders are being sentenced to electronic monitoring?” you will probably want to collect a number of data elements to answer this question, such as the arrest charge, the charge of conviction, how many times the offender has been on community supervision before and the outcome of those sanctions, the offender’s mental health history, etc. Be as specific as possible in listing data elements. Noting “substance abuse history” as a data element may not be sufficient. What do you want to know about that history? Length of use? Substances used? Extent of use?

---

**Exercise 10-1 continued****Developing an Effective Monitoring System**

- 
3. Review your list of questions and divide them into three categories: questions that ask for **case processing information**, questions that ask for **offender information**, and questions that ask for **offense information**.
  4. Now consider how well each of your data elements helps you to distinguish information. List your data elements for each category on a flipchart. Scale each of your data elements, judging it against the question, "How well does this data element help distinguish between groups of offenders (or groups of cases)?"
  5. Next, consider **your rankings** of the data elements you listed. Make a determination about those that are really not necessary or helpful in distinguishing categories of offenders and delete them from your list.
  6. Consider each of the remaining data elements separately and determine the source, or location, of the data. If there are multiple sources, such as the court file and the court computer, note the source that is most readily accessible.
  7. Where does this list leave you? Consider the following questions:
    - How many different sources do you need to access to retrieve data?
    - Are your data available on computer? In paper files? In some combination?
    - Is there a single place where a majority of the data is available? Is this a place to start in building a single-source data system? In thinking about this, also consider:
      - How retrievable are the data from this source?
      - If the data are automated, how does it get entered? Who can retrieve it?
      - Can the data be analyzed as now maintained (i.e., if the data are automated, can you interact with the database without going through other agencies and without great expense)?
    - Given what you have learned, do you have to start over? If so, where do you start?

---

## **Exercise 10-2**

### **Testing a Monitoring System**

---

In Exercise 10-1, the policy group considered the data elements needed to establish an effective monitoring system. The test of an effective monitoring system is whether it provides the data necessary to answer the questions that policymakers have about the current sanctioning system.

#### **Objectives**

The objective of this exercise is to subject the monitoring system to a test to insure that the monitoring system answers the questions of **all** relevant policymakers.

#### **Instructions**

1. As a group, place yourselves in the following scenario: It is two years into the future. Over the past two years, the policy group has examined and made modifications to the use of sanctioning options. The county has provided the funds for new options and has supported the policy group's work.

During an evaluation of budget requests for the coming year, the local legislative body requests that the policy team make a presentation and justification of the budget relative to the sanctioning options for offenders.

2. Consider and answer the following questions:
  - What questions do you anticipate the funders will have?
  - Will you be able to answer their questions, given the monitoring system you have put in place?
  - What information gaps do you have?
3. In light of this exercise, consider what modifications or additions to your monitoring system need to be put into place.

**Utilizing an Information System to Monitor Corrections****I. There Are Different Uses of the Term “Information”:**

- A.** *Decisionmaking information* is information that is used to assist in the formulation of a individual case decision. Presentence investigations, pretrial assessments, and chemical dependency evaluations are all examples of decisionmaking information.
- B.** There are two kinds of *evaluation information*:
  1. **Process evaluation** information includes data on whether the program intervention actually took place. Was treatment provided? How many drug screenings occurred? How many hours of community service were actually served?
  2. **Outcome evaluation** information includes data on whether the desired effect occurred. For example, if drug and alcohol abstinence was a program goal, how many offenders who completed the program remained drug- and alcohol-free?
- C.** *Monitoring information* includes key data on offenses, offenders, and case processing that is collected routinely on all cases. Aggregating the information from individual cases in an automated monitoring system makes possible both the development and evaluation of policy.

**II. Policymakers Must Be Involved in the Development of a Monitoring System:**

- A.** Monitoring information is crucial to rational resource allocation, program development and implementation, and program monitoring.
- B.** Monitoring information is the foundation for good program evaluation.
- C.** A monitoring system must be responsive to the needs of policymakers—it must answer their questions; hence, their input into its development is essential.

## **Building an Information System to Monitor Sentencing**

---

### **III. Key Issues in the Development and Implementation of an Effective Monitoring System:**

#### **A. The kinds of information needed:**

- Information on *offense characteristics*, such as statutory differentiations, type of victim, weapon use, and property loss.
- Information on *offender characteristics*, such as gender, criminal record, and dependence on drugs and alcohol.
- Information on *case processing*, such as initial charges, plea negotiations, and disposition.

#### **B. Deciding on what specific information to include:**

- What do policymakers want to know?
- Where does information regarding a factor currently reside?
- How objective and how reliable is the information?
- How well does a factor differentiate among cases?

#### **C. Deciding who should record the information in the monitoring system:**

- The person who has immediate access to the information should record the information on a well-designed form, either paper or automated.
- Information may be recorded in stages by various staff, such as the probation officer, presentence investigation writer, prosecutor, or judge.
- Information may be recorded at the end of the process; however, this requires ensuring that key documents are routinely placed in files, all of which are readily accessible when it is time to record.

#### **D. Choosing how and where the information should be maintained may involve:**

- use of a preexisting automated (mainframe) system;
- use of personal computers; or
- use of paper forms with bar-coding or paper forms for later data entry.

#### **E. Establishing a short trial period before full implementation:**

- Is the information sought available and reliable?
- Are the right data elements being collected (i.e., Do we have the right data to answer our questions)?
- Is the monitoring system established in the most efficient way?

### The Experiential Approach to Targeting

Madeline M. Carter\*

**Introduction** This chapter is written in recognition of the fact that some policy groups find themselves in circumstances that prevent them from engaging in the intermediate sanctions process as we have described it throughout this handbook. This is the case, for example, with a group that is brought together in response to an immediate crisis, such as a court order to reduce jail crowding. Other groups may have come together with every intention of working through this process but, for a variety of reasons, find themselves falling short of their own expectations. The benefits of the experiential approach to targeting are several: It can produce some relatively quick successes for a group that needs legitimacy or momentum, and it provides a forum for the group to tackle some fairly concrete work.

The process of developing a policy-driven approach to the use of intermediate sanctions is an interactive one. Progress usually involves revisiting certain issues, adjusting direction, and adapting to lessons learned. The experiential approach suggests that this iterative process can begin under less than ideal conditions. However, this chapter should not be considered an abbreviated version of the intermediate sanctions process; there are no shortcuts. The intermediate sanctions process is a dynamic experience destined to change the way a jurisdiction does business. This approach is offered as an alternative for groups facing barriers that prevent following a more studied approach. It is our hope that this approach will move such teams far enough along that they will have the collective strength and spirit to go back and start from the beginning.

#### What Is Targeting?

Targeting is the process by which a jurisdiction examines offender groups by their profiles, in order to choose appropriate sanctions for them. Chapter 12, An Analytical Approach to Targeting, describes this process in detail. This approach to targeting offender populations entails examining all sentenced offenders in a jurisdiction for those characteristics—of the offender and the offense—thought central to the sentencing decision. Through an ongoing, interactive dialogue between policymakers and those with access to empirical data, the policymakers formulate profiles of offender groups—groups that share key

characteristics and are considered by the policymakers to be equal with respect to how they should be sanctioned.

*As its name implies, the experiential approach uses the everyday sentencing experiences of policymakers to identify important groups of offenders, their key characteristics, and the most desirable outcomes for any sanctioning options designed for them. This approach enables a policy group to engage in the substantive discussion of targeting and resource use on the basis of its own experience, rather than on an empirical or analytical basis.*

offender groups and resources, modify resources as appropriate, and identify gaps in the current array of sanctioning options. Supported by empirical data, this process provides a systematic examination of the sanctioning system and considers both the modification of existing resources and, potentially, the development of new resources.

#### How Does the Experiential Approach to Targeting Differ?

The experiential approach to targeting can be used when the policy group lacks either the time or the data to support the process described above. While the analytical approach is more valuable from a systemic point of view, it is not always the most practical. As its name implies, the experiential approach uses the everyday sentencing experiences of policymakers

© Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

A second essential step in this process is obtaining an accurate picture of the sanctioning resources currently available and assessing those resources against the profiled offender populations. In so doing, the policy group is able to match

\*Some of the material covered in this chapter was developed for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

to identify important groups of offenders, their key characteristics, and the most desirable outcomes for any sanctioning options designed for them. This approach enables a policy group to engage in the substantive discussion of targeting and resource use on the basis of its own experience, rather than on an empirical or analytical basis.

#### **Beginning the Discussion: Who? What? When? How?**

##### **Who?**

Ideally, the full policy team will participate in this process. (Chapter 5 describes the establishment of the team, the membership, and the caretaking necessary to become and remain a productive group.) Because this approach bypasses the very important step of developing the group's baseline information about the sentencing system in your jurisdiction, it is critical that the entire group participate in the discussions and decisions detailed below. Those who have limited experience with sentencing decisions will profit from hearing from those who have more extensive experience with the offender population, while experienced policymakers will benefit from the exposure to the perspectives of group members who play different roles in the system.

##### **What?**

The direction of this effort will be driven by the circumstances that have led you to this route in the first place. A jail-crowding crisis, for example, might dictate a different approach than the need for a quick success or the opportunity presented by the unanticipated availability of new resources. The approach begins by defining some very limited issue that all group members can agree is problematic and upon which they are willing to focus time and energy. The issue might be a group of offenders for which no satisfactory sanction currently exists, or the need to identify a segment of the jail popu-

lation that everyone would be most comfortable seeing removed to a community-based sanction. The group might take on a particularly troubling or troublesome situation in your system: the reliance on weekend sentences as a sanction, for example.

---

*Use the experiential approach to targeting when you are in a crisis mode and must act fast or when you have been carefully working with your intermediate sanctions team and, try as you might, you cannot get issues on the table for open discussion. Try the experiential approach when the wind has left your group's sails and you fear the group will disband unless it undertakes some substantive work.*

---

##### **When?**

Use the experiential approach to targeting when you are in a crisis mode and must act fast or when you have been carefully working with your intermediate sanctions team and, try as you might, you cannot get issues on the table for open discussion. Try the experiential approach when the wind has left your group's sails and you fear the group will disband unless it undertakes some substantive work. But—do not invest your time here if your group is functioning well, is not under time pressures, and is interested in taking a solid look at how your sanctioning system currently works.

##### **How?**

There is no single answer to this question. Your instincts will tell you the best way to proceed. The important point is that the team begin to work collaboratively toward shared goals. A suggested format for your work is outlined below. It is designed primarily for choosing a group or groups of offenders for whom new sanctioning options are to be created. If you are working toward some other goal, you will want to modify the format. In

choosing your approach, stay focused on what you are trying to achieve with this effort and on the factors that will form the foundation for future work for your team:

- That your team begin to function as a unit;
- That your work engage the questions of what your jurisdiction's current sanctioning practices are;
- That your team consider what might be done differently, and why the change is for the better; and
- That your team seek and consider the input of many different policymakers and whatever data are available in undertaking its work.

##### **Clarify Your Goals**

As indicated earlier, there are a number of reasons why you might choose (or need) to take this approach. Whatever they are, do not proceed until your entire team understands what you are trying to achieve and agrees with the goal.

In some cases, your goal will be obvious: to reduce the sentenced population in the jail, for example, or to do something quickly about the large number of young drug offenders overwhelming the court. Such a purpose may have been the reason your team was organized. If that is the case, you must still press for the fullest possible exploration of the task before you, the criteria that will guide your selection of options (cost, speed of implementation, and effectiveness, for example), and any other conditions or restrictions on your efforts.

Your group may not have been organized for a specific purpose, however. In this case, revisit the issue that did bring the team together or the goals that individual members share for the system. If those are expressed as problems—dissatisfaction with the current sanctioning options, for example—it is important to get them restated as positive ends toward which you are working. You need specific, positive goals to guide your collective efforts.

## **Identify Your Target Population**

### *The Collective Wisdom of Your Policymakers*

The analytical approach to targeting relies on empirical data to determine whether particular offender groups are being adequately served by the existing sanctioning system. (“Adequately” is defined by the outcomes the policymakers have identified for those groups.) In the experiential approach, a lack of time or a lack of data presents obstacles to this approach. The alternative method for identifying populations to target for action, then, is to tap the collective experience of those who dispose of these cases on a daily basis. This is best accomplished by conducting interviews with the jurisdiction’s policymakers, including judges, prosecutors, the defense, and probation officials. You may decide to include others. The point is to include a spectrum of viewpoints from those individuals whose day-to-day decisions strongly influence the outcome in individual cases. You will want to interview several persons in each category.

### *A Method for Collecting This Wisdom*

Your goals will determine the content of the interview. A sample format is included as Exhibit 11-1 in this chapter. This interview is designed to elicit insight from policymakers in two key areas: first, which existing sanctions they view as working well and, second, which offender groups they believe are not being well served by the system. These questions probe the underpinnings of how policymakers view particular offender groups and specific sanctioning options.

You may also collect the viewpoints of those who administer existing programs, which may surface a number of issues, especially in comparison with the policy-maker interviews. The insight of program administrators regarding the population being served by their programs, the ideal population for their programs, and the

### **Exhibit 11-1**

#### ***Sample Interview Format: Policymakers’ Views on the Use of Intermediate Sanctions Programs***

1. From your perspective, what are the purposes of intermediate sanctions?
2. What are the factors (implicit and explicit) that influence sentencing in this jurisdiction?
3. What is there about the current range of sentencing options that you feel is unsatisfactory (e.g., the number of options, their capacity, the quality of supervision or treatment, etc.)?
4. Are there any groups of offenders that you see regularly for whom you feel there are no appropriate intermediate sanction options?
5. What modifications to the current process would facilitate greater use of intermediate sanctions?
6. Which program(s) do you use most frequently, what type of offender do you send there, and what is your goal in so doing? What is it about these programs that you find most appealing, comfortable, impressive (e.g., program features, the population served, cost effectiveness, good publicity, good staff, etc.)?
7. Are there any programs that you are particularly dissatisfied with?
8. What would make you more inclined to support or use intermediate sanctions?
9. Is there a particular sanctioning option or program that you would like to see implemented in this jurisdiction? Why? For whom? What about it is especially appealing?
10. What does your office or agency stand to gain or lose by using intermediate sanctions? What are the risks involved?
11. Do you think that you have enough information regarding:
  - intermediate sanctions in general;
  - intermediate sanctions in this jurisdiction;
  - the jurisdiction’s offender population;
  - local sentencing practice; and
  - the performance of current programs?
12. How would you define your responsibility for or role in the success of intermediate sanctions? How do you exercise that responsibility?

purposes of the programs will provide you with a greater understanding of how the system currently functions. A sample interview format for this interview is provided as Exhibit 11-2 in this chapter.

These interviews can be conducted by policy team staff, but ideally should be conducted by a knowledgeable person from outside the system. Persons outside the process are often able to gain a clearer

understanding of the values and goals of those being interviewed. They are more likely to be free of investments and pre-conceived ideas.

### ***Processing the Results***

The results of the interviews serve as the basis for the initial dialogue among team members. They should therefore be presented in as much detail as possible,

**Exhibit 11-2****Sample Interview Format: Program Administrators' Views on the Use of Intermediate Sanctions Programs**

1. What is the profile of the offender population that you typically serve?
2. How has your client population changed over time?
3. What do you do best and with whom? What factors enable you to be effective?
4. What interferes with your program's ability to achieve its best?
5. Are there any particular offender populations that you believe are not adequately served by the current range of intermediate sanctions? If so, please describe that population and the components of an appropriate sanctioning option.
6. How do you define success for your program?
7. Do judges (or others) define success for your program differently?
8. What is the ideal population for your program?
9. How closely does your current population match that? What is different and why is it different from the ideal?
10. Who recommends your program as a sanctioning option, and at what point in the process do they recommend it?
11. Who has the authority to place people in your program? How does this access define your program's population?
12. Has anyone ever asked you these kinds of questions before?
13. What feedback (of the sort discussed in this interview, regarding your program's purpose, your ideal population contrasted with the typical population served, etc.) do you give, to whom do you give it, and under what circumstances?
14. What have you been asked for in the way of feedback from those who recommend your program as a sanctioning option or those who have the authority to place people in the program?
15. What would be the best mechanism for you to communicate with policymakers (such as the court) about these issues (i.e., on the basis of individual cases, on the basis of aggregate cases, through a liaison, etc.)?
16. How might a communication effort of this sort become a part of the routine in this jurisdiction?

self these questions: Is the widest area of agreement a shared description of the characteristics that compose a particular offender group? Is it the program features of a sanctioning option that meets articulated sentencing goals?

**Translating Results Into Action**

As a result of these conversations, can the policy group agree on a particular group of offenders for which there is general dissatisfaction with the system's current response? What are the characteristics of the offender group? (Chapter 10, Building an Information System to Monitor Sentencing, and Chapter 12, An Analytical Approach to Targeting, suggest key offender characteristics to consider in delineating such a group.) Is there agreement among the team members that these offenders compose a number sufficient to warrant the examination of an alternative response?

**Checking Assumptions Against Empirical Data**

At this point, the team needs to check its assumptions about the group that has been identified: How many offenders actually fall within the group as it has been described? How is this group currently being sanctioned? Once these data are assembled, the group must closely re-evaluate its original premises. How well do the data bear out the beliefs of the team members?

If the data are not what the policy team expected, the team must return to the task of describing the group, examining the original characteristics, and expanding them in a manner that will maintain the integrity of the defined group. This process will have to be repeated until the team has defined a group that is big enough either to warrant a new intervention or to achieve other desired policy ends, such as reducing the jail population or diverting drug offenders.

including the range of answers to each question and the category of respondent (judges, prosecutors, and so on). The policy group is likely to have many questions about the results and should strive to analyze and understand both the goals and values that underlie the different points of view. Is there concern about the handling of specific groups of offenders? Are there

areas of agreement around how those offenders might be handled differently? With which sanctions in the current array are policymakers particularly satisfied? Why? Which sanctions are not meeting the goals of the policymakers? Why not?

At the conclusion of this discussion, the core items on which there is widest agreement should be identified. Ask your-

---

### **Selecting a Response for the Target Population**

Once a distinct offender population has been identified, the team should engage in a discussion about the most appropriate response to this offender group. Such a discussion must begin with a conversation about the goals that the team shares for handling the offender group. Use Chapter 8, Agreeing on Goals, as a reference point in these discussions. To the extent that the team can obtain clarity and agreement on the outcomes desired in sanctioning a particular group of offenders, a sound programmatic response can be developed. Chapter 13, Program Design, outlines the elements of sound and purposeful program design, which is based on both the identification of a targeted offender population and the clarity of purpose in sanctioning.

### **The Pitfalls of This Approach**

This approach is not without pitfalls. The most common pitfall is that the data often demonstrate that the offender group that a jurisdiction targets as its focus does not represent a significant number of offenders. (It may be that because policy-makers are so unhappy with their options for this particular group of offenders, the group appears larger than it is.) Likewise, in examining how these offenders are currently being handled, it may be discovered that many more are sanctioned appropriately than was assumed.

Another common difficulty with this approach is in reaching agreement on sanctioning goals for the identified population: Agreeing on goals for a particular offender group can be quite difficult, particularly when there has been no agreement on systemwide goals.

### **Conclusion**

The point of the experiential approach to targeting is to establish a foundation for future work. The experience that the policy team gains from undertaking the work described here is best used as the basis for further group discussions, the purpose of which is to enhance the team's understanding of the groups of offenders flowing through the system, how they are being handled, and the implications of these findings for the future of a policy-driven system.

### **Exhibit 11-3**

#### **A Shopper's Guide to Correctional Programs**

It is almost inevitable, whether you are a judge or a corrections official, whether you are engaged in deliberations concerning intermediate sanctions or not, that you will be accosted by one of your peers, or by a policymaker from another agency, who has just returned from a conference or meeting with a new fire in her eye. While at this event, she heard about this wonderful new program that is working miracles in some other jurisdiction. And she wants you to go with her and some other folks from your jurisdiction to look at it.

Your colleague is persistent. You agree to go on this visit. How do you make the most of that time and travel? How do you make sure that you get the best and most useful information while there? What are the concerns and issues that should guide your questions at the site and at home? We hope that the suggested questions that follow will assist you in being a careful shopper.

#### **Conducting the Visit**

Your visit will no doubt be arranged and led by one or more of the program's administrators or managers. After you have toured the facility, observed the program in operation, and looked at the printed summaries and reports, ask to interview both direct line staff and some participants in the program.

Ask line staff and participants what they think the chief purpose of the program is. Why do they think so? How successful is the program, in their view and experience, in achieving that purpose? Why does it seem to work or not work?

Observe the conditions of whatever physical plant is involved. Is it well cared for? Do the conditions (check out the bathrooms!) reflect respect for those who use it?

Observe the demeanor of staff as they conduct their business. Do they look intent and purposeful or bored and just hanging around? How do they interact with the program participants? Easily and respectfully? Are they condescending? Hostile or aggressive?

You may be thinking, "Hey, I'm not planning to enroll my six-year-old here; all I want to do is look at a program for offenders!" Let us assure you that these observations will provide you with two important insights: First, if this program seems to be as successful as it claims, these factors (a staff with a clear sense of direction, who are invested in their work, respect their clients and themselves, and show that in their care of their workplace) are probably key to that success; second, if those factors are absent, the program is unlikely to be as successful as it claims.

#### **Questions to Ask Yourselves During and After the Site Visit**

1. Which group of offenders do we think this program would be suitable for? Consider offenses, offender types, and legal status (pretrial, diversion, sentenced).
2. How are we handling or sanctioning those offenders now?
3. What would be the ideal sanction or disposition for this group?
4. What do we want to achieve for this group?
5. Why is this program a better option than what we are doing now? What does this program offer that our sanctioning options do not? More severe or onerous conditions? More, or more appropriate, services? Better surveillance? Greater control? More effective treatment?
6. What is the target population for which this program was designed? How does that population compare with the offender group that we have in mind?
7. What features of this program are particularly appealing?
8. What are those features designed to achieve? Are those purposes similar to ours?
9. Are any of those features available in any programs in use in our jurisdiction?
10. Do those features seem to be effective? How is their effectiveness demonstrated and measured?
11. Do we have any measures of effectiveness for similar programs in our jurisdiction?

***Exhibit 11-3 continued***

12. How much does this program cost? What are the startup costs? The ongoing operating costs?
13. How does the program define success? How is it measured?
14. How is failure defined? What is the failure rate? Does it seem high or low?
15. If we were to have a similar failure rate, what impact would that have on the rest of the system? What options do we have to sanction failure?
16. Are there aspects or features of this program that could not be replicated in our jurisdiction, e.g., because of the availability of a special facility or resources, unique staff, or auxiliary agencies?
17. Does the program require specially trained staff, e.g., medical, psychological, or educational? Are those people available in our jurisdiction at salaries that we can pay?
18. How would we pay for this program?
19. What agency would administer it? Does that agency have the staff and other resources to handle the job of program design and startup?
20. How would we control access to the program?
21. Could we achieve our aims by changing existing programs or reallocating the use of current options?

***Questions to Ask the Program's Management***

1. Who is this program designed for? What are the specific criteria that offenders have to meet to be eligible for the program?
2. What is it intended to achieve? If there is more than one purpose, which is most important?
3. How would you define success for your typical client?
4. How do you measure that success?
5. What features have you built into your program to achieve its primary purpose? What features are designed to meet the secondary objectives?
6. How many of your clients meet the eligibility criteria?
7. How do offenders get into your program, e.g., directly from the court, referral from probation or pretrial, only with your agreement?
8. How is your program funded or paid for?
9. What do you consider failure? How do you respond to failure? What is your rate of failure?

***Questions for Analysis After Your Return***

1. How many offenders do we have in our system who fit the definition of the group for whom we are considering this new program (or a new program)?
2. Do we know how they are sanctioned now; that is, how many of this group are in any of the available sanctioning options?
3. If the number of offenders is small, is it worth creating a new program for them? How are we defining "worth"?
4. If the numbers are large, what will be the effect of removing a significant portion of them from the sanctions currently used for them? Who, if anyone, is likely to take their place?
5. How do those offenders perform now in the current sanctions?
6. How would we expect them to perform in this new program?
7. If we anticipate a higher failure rate, are we equipped to handle it?

## **The Experiential Approach to Targeting**

---

### **I. Two Approaches to Targeting Offender Populations:**

- **The analytical approach** to targeting uses empirical data to guide an interactive discussion among policymakers and the formulation of distinct offender profiles based upon empirical data.
- **The experiential approach** uses the everyday sentencing experiences of policymakers to identify distinct offender groups to assist in the development of offender profiles.

### **II. There Are Several Advantages to the Experiential Approach:**

- It is more efficient.
- It can require fewer resources, in terms of data collection and analysis.
- It is a good mechanism to engage a policy group that is having difficulty getting started or finding areas of agreement.

### **III. The Essential Ingredient of the Experiential Approach:**

- The participation of the full policy group is essential.

### **IV. The Goals of the Experiential Approach Are to:**

- assist the policy team in establishing itself as a functioning unit;
- engage the policy group in discussions about what current sanctioning practice is—what is working and what is not;
- encourage the policy team to consider what might be done differently, and why change would be for the better; and
- establish a forum in which policymakers seek and consider the input of a diverse group of decisionmakers, as well as the available data, as a regular part of its work.

### **V. The Steps in the Experiential Approach to Targeting:**

1. Define the goal of your work. Select a limited issue to work on that all group members can agree is problematic, and upon which they are willing to focus time and energy. Do not proceed until the entire team understands what you are trying to achieve and agrees. You need specific, positive goals to guide your efforts.

### **The Experiential Approach to Targeting**

- 
- 2.** Identify your target population. If your focus is to examine alternative sanctions for a particular offender population, begin by tapping the collective wisdom of those disposing of cases on a daily basis. Choose a spectrum of people and viewpoints.
  - 3.** Interview these individuals. Get their thinking on what is currently working and why it is working, as well as what is not working and what improvements they envision.
  - 4.** Present the interview results to the policy group in as much detail as possible. Present the range of responses by category of respondents to the following questions:
    - What are people concerned with?
    - What are the areas of agreement?
    - What are the areas of disagreement?
    - Which sanctions are meeting the goals of policymakers? Which are not?
  - 5.** Determine whether the policy group can agree on a particular group of offenders for whom there is general dissatisfaction with the current sanctioning response.
  - 6.** Are there enough offenders in this group to warrant examination of an alternative response? Check assumptions against empirical data through focused data collection and analysis.
  - 7.** Come to agreement on sanctioning goals for this offender group and, in light of those goals, discuss appropriate responses to the offender group (use Chapter 13, Program Design, as a guide).

#### ***VI. There Are Several Pitfalls to This Approach:***

- The data may reveal that the targeted population is very small.
- The data may reveal that the targeted population is, for the most part, already sanctioned appropriately.
- The policy group may have trouble agreeing on sanctioning goals for a select population of offenders if the team has not already worked on establishing systemwide goals.

## An Analytical Approach to Targeting

*Kay A. Knapp and Madeline M. Carter*

---

**Introduction** Taking an analytical approach to targeting is the first step in implementing the sanctioning policies adopted by the policy group. It is a process that combines a thorough analysis of offenders coming through the criminal justice system, discussions of the effect or outcome that policymakers want to achieve for various subgroups of those offenders, and an assessment of the ability and capacity of current sanctioning options to accomplish those outcomes or effects. At the conclusion of its analysis, the policy group will have matched categories of offenders to specific sanctioning options. (Those options may or may not already exist, but that is the subject of Chapter 13, Program Design.) In reality, the policy group never finishes targeting. Like many other parts of this intermediate sanctions process, targeting involves analysis, discussions, and decisions that are ongoing and as dynamic as the problems that confront jurisdictions from month to month and year to year.

### **Overview of the Approach**

Targeting is at the heart of policy-driven intermediate sanctions. Describing sanctions as policy-driven implies that each sanction has been chosen to serve a particular function in an overall sanctioning system and that an express purpose has been defined and a population specified for each.

Targeting pulls these activities together. We have emphasized the need for the policy group to play a strong substantive role in every aspect of this intermediate sanctions work. The process of targeting requires the active, substantive leadership and guidance of the policy group as well. In this area, however, the policy group discussions and choices about goals, values, and desired outcomes interact with an empirical analysis of data to form an analytic approach to profiling and targeting offenders.

The steps in the targeting process reflect this movement back and forth between deliberations and decisionmaking in the policy group and the data collection and analysis of the researchers. The steps fall into six general sets of activities:

1. Collecting and compiling data on all sentenced offenders in the jurisdiction;
2. Defining, profiling, and redefining groups of offenders who are similar in ways that are relevant to sanctioning;
3. Examining available sanctioning options and their current use;
4. Assessing how well current practice reflects the goals and desired outcomes articulated by the policy group;
5. Devising the most desirable array of sanctions and their specific use, including the designation of options to be created; and
6. Implementing the sanctions.

As these activities indicate, in targeting policymakers use concrete information as a tool for decisionmaking.

### **Data Collection**

Step one in the targeting process is to collect and compile data on all sentenced offenders. All sentenced offenders includes those currently sentenced to prison, jail, probation, and to the myriad programs used for sanctioned offenders. It might or might not include misdemeanants as well as felons, depending upon the policy group's focus and upon the feasibility of obtaining data on misdemeanants.\*

The data items needed for targeting are essentially those outlined in Chapter 10, Building an Information System to Monitor Sentencing. The items include key offense, offender, and case processing

---

***The first step in the analytical approach to targeting is to collect and compile data on all sentenced offenders. Who are the offenders flowing through our system? What are their characteristics? How are they the same and how are they different?***

---

© Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

---

\*This material appeared in documents prepared for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

variables as determined by the policy group. Although policy groups differ in terms of the variables they consider essential to sentencing decisions, the variables are likely to include many of the following:

#### **Offense Characteristics**

- Statutory citation of the most serious conviction offense
- Statutory penalty constraints that prohibit the use of intermediate sanctions
- Type of victim
- Relationship of victim to offender
- Age of victim
- Use of a weapon
- Physical injury
- Property loss
- Relationship of the offense to drug use

#### **Offender Characteristics**

- Gender
- Race
- Age
- Chemical or alcohol use or dependence
- Criminal record
- Criminal justice status at time of offense
- Employment
- Education
- Mental health and prior treatment

#### **Case Processing**

- Initial charges and plea negotiations
- Presentence investigation report completion
- Pretrial detention
- Sentence disposition, including conditions of probation
- Sentence durations

The data collection effort **must** be focused on the **entire** population of sentenced offenders. This is necessary for three primary reasons:

**First**, a systems approach such as the one outlined in this handbook requires an understanding of how all offenders are treated and how all sanctions are used. Corrections resources, whether they are institutional beds or community-based slots, are finite. The use of these varying resources is interrelated. For example, the way prison and jail beds are used (for which offenders, for what crimes, and for how long) affects the nature of target populations for intermediate sanctions and affects the availability of those beds for probation revocations. Some modification of prison and jail use might be necessary to implement a coherent and rational policy on intermediate sanctions.

**Second**, there is often substantial overlap in sanction use, with similar types of offenders sentenced to very different sanctions. As a part of the targeting process, the policy group must define and articulate clear sanctioning goals and purposes, and then develop strategies for sanctioning various groups of offenders. Once that is done, it is important to evaluate all offenders who share the characteristics of each distinct group, regardless of the sanctions they currently receive. Once targeting criteria are defined, the criteria must be applied to all offenders coming through the system with those attributes, not just to those offenders who are currently receiving a particular sanction. It is important to know the total size of the offender groups defined by the targeting criteria so that an adequate number of program slots can be estimated. This can only be done by examining the total population of sentenced offenders, regardless of their current sanctions. (See Chapter 13, Program Design, for further discussion of this point.)\*

**Third**, the notions of intermediate sanctions and a continuum of sanctions assume that we can “place” offenders in intermediate sanctions appropriately, relative to more serious offenders in prison

and to less serious offenders on simple probation. The entire population of sentenced offenders must therefore be examined to ensure that the continuum of **offenders** is coordinated with the continuum of **sanctions**.

Throughout the remainder of this chapter is a series of illustrative diagrams, reflecting the results one might expect from a data collection effort of the sort described here.

Figure 12-1 reflects a population of offenders that is essentially undifferentiated. It is merely a representation of the universe of sentenced offenders in a given jurisdiction. The population includes offenders convicted of many different offenses, with various criminal records and with various problems and needs, who are placed in various sanctioning options.

---

***“Although Jefferson County [Kentucky] has instituted a number of new programs over recent years in an attempt to depopulate the jail, the programs were added as isolated experiments and never built into the context of a comprehensive sentencing strategy. As a result, there is no consistency in how the criminal justice system handles offenders, and in many cases, offenders with similar problems and needs are simultaneously assigned to all of the existing alternative programs. One has only to compare this situation to how hospitals manage patient populations to recognize that there is currently no mechanism in Jefferson County to ensure effective utilization of correctional resources.”***

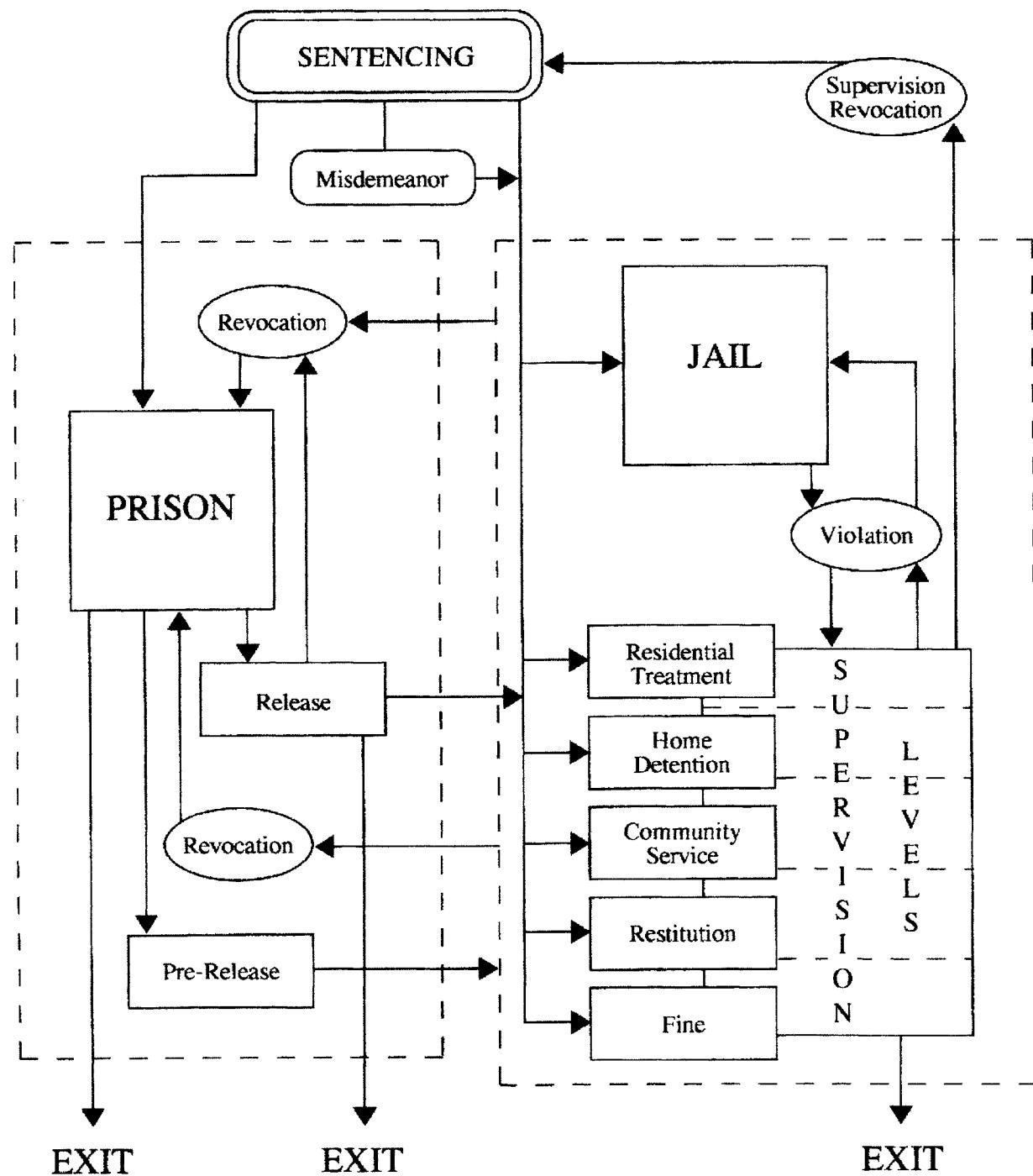
—*Kim Allen, Executive Director, Louisville-Jefferson County Crime Commission, from “Intermediate Sanctions in Jefferson County: A Policy Driven Approach to Alternative Sentencing.” Paper submitted to the Louisville Bar Association Bar Briefs, September 21, 1992.*

---

\*This material appeared in documents prepared for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

*Exhibit 12-1*

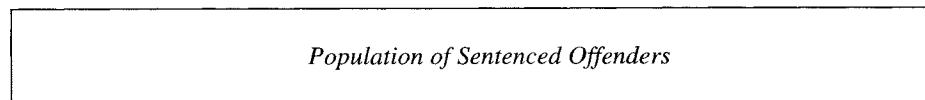
*Structured Sentencing Simulation Model*



Developed by Kay A. Knapp, Director, Institute for Rational Public Policy, Inc.

**Figure 12-1**

**Representation of the Undifferentiated Universe of Offenders**



**Defining and Profiling Relevant Groups**

The policy group's task in the second step of the targeting process is to define and profile substantively relevant groups of offenders. **Substantively relevant groups** refers to subsets of offenders, identified on the basis of the policy group's experiences, that are similar in ways that might be relevant to sanctioning. For example, a policy group might identify the relevant groups, or subsets of offenders, in its first cut at differentiating the population as follows:

- Group A — First-time drug offenders
- Group B — Drug offenders with prior felonies
- Group C — First-time burglary offenders
- Group D — Burglary offenders with prior felonies
- Group E — Women convicted of welfare fraud, shoplifting, or other property offenses
- Group F — DWI offenders
- Group G — Domestic assault offenders (with adult victims)
- Group H — Child sexual abuse/assault offenders
- Group I — Other property offenders
- Group J — Other person offenders

Grouping the population represented in Figure 12-1 by the subsets designated above (Groups A through J), the groups might be represented as shown in Figure 12-2, below.

The researcher's task is to define these groups in the data set and then to profile them using offense, offender, and case processing variables. For example, what do we know about the offenders in Group A, in addition to the facts that they have been convicted of a drug offense and have no priors? How old are they? How many of them are female? How many of them are employed? Were they detained pretrial? What sanctions did they receive?

Questions will inevitably arise in defining the groups. For example, are male roommates to be included in the domestic assault group? Is a barroom assault between a couple that does not live together included? The researcher might make initial decisions regarding these questions, but the policy group must ultimately make these decisions.

The researcher must examine the data to ensure that the defined groups encompass the entire population of cases. Any cases not included should be brought to the policy group's attention. The policy group may decide to add these cases to the existing groups or to define additional groups. The point is to ensure that no groups of offenders are overlooked.

As noted above, once the groups are defined in the data, the researcher can analyze the data to provide further profile information.

- The first analyses would probably include **frequency distributions** of gender, race, age, employment, education, chemical dependency, statute, criminal record, and sentencing variables for each group.

- Subsequent analyses would probably include **cross-tabulations** that show, for example, the number of young offenders in Group A who are chemically dependent (i.e., age by chemical/alcohol abuse selected for Group A offenders) or the number of Group G offenses in which serious injury occurs and a weapon is used (i.e., injury by weapon selected for Group G offenders).

The design of this analysis is usually collaborative, with the researcher pursuing interesting patterns in the data and the policy group members posing specific questions about offenders and groups.<sup>+</sup>

After the initial analysis, the policy team may decide to redefine the offender groups. For example, the policy group might decide that drug offenders **with** prior felonies (Group B) are not much different from those **without** prior felonies (Group A) except that the former tend to be somewhat older and have a somewhat more serious chemical dependency problem. In that case, the policy group might want to combine Group A and Group B, presuming that they determined that these distinguishing

**The second step in the targeting process is to define and profile substantively relevant groups of offenders. Substantively relevant groups of offenders are subsets of offenders for whom like sanctioning responses are appropriate. What characteristics are relevant distinguishing factors when we examine offender groups? Which factors do not help us distinguish among offenders?**

<sup>+</sup> This material appeared in documents prepared for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

**Figure 12-2**

**Representation of Substantively Relevant Offender Groups**

A	B	C	D	E*	F	G	H	I	J
---	---	---	---	----	---	---	---	---	---

\* Women with property offenses overlap with other groups, such as C, D, and I.

features were not significant to them. They might discuss differentiating possession of drugs from the sale of drugs, but decide to keep the cases together because so many offenders convicted of sales are actually user-sellers. The policy group might decide that the more relevant differentiating feature for drug offenders is employment, and might therefore modify Group A to contain employed drug offenders and modify Group B to contain unemployed drug offenders. What constitutes a “relevant differentiating feature” varies by the goals, purposes, and outcomes that the policy group is seeking to achieve.

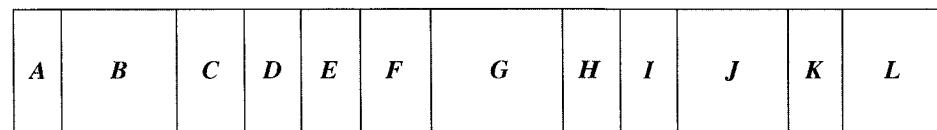
After discussing the profiles, the policy group may decide that women who sell drugs are not much different from women who shoplift to support their drug habit. Assaults between acquaintances (“bar-room brawls”) might be similar to domestic assault with respect to the role of alcohol or chemicals in the commission of the offense and with respect to intervention (anger management). The policy group might decide that it is important to differentiate “other property offenders” between those **without** a prior felony conviction and those **with** a prior felony conviction. Finally, the group might decide to differentiate DWI cases according to those with a serious chemical dependency problem and those with a less serious problem.

Given these scenarios, the revised grouping would be as follows:

- Group A — Employed drug offenders
- Group B — Unemployed drug offenders
- Group C — First-time burglars
- Group D — Burglars with prior felonies
- Group E — Women convicted of drug offenses, welfare fraud, shoplifting, or other property offenses

**The third step entails examining the current use of sanctioning options relative to the newly defined subsets of offenders. How are these offenders currently being sanctioned? The policy group is likely to find inconsistent sanctioning patterns.**

**Figure 12-3**  
**Representation of Substantively Relevant Offender Groups—Further Refined**



Note: Shading indicates groups that were revised.

Group F — DWI offenders with serious chemical dependency problems	Sanction 3 — Jail with work release
Group G — DWI offenders with less serious chemical dependency problems	Sanction 4 — Residential facility, nontherapeutic
Group H — Domestic and acquaintance assault offenders	Sanction 5 — Residential facility, therapeutic
Group I — Child sexual abuse/assault offenders	Sanction 6 — Day reporting
Group J — Other property offenders without prior felonies	Sanction 7 — Home detention with electronic monitoring
Group K — Other property offenders with prior felonies	Sanction 8 — Home detention without electronic monitoring
Group L — Other person offenders	Sanction 9 — Community work service
	Sanction 10 — Nonresidential treatment
	Sanction 11 — Fines, restitution, and other monetary penalties
	Sanction 12 — Supervision with frequent contacts
	Sanction 13 — Supervision with infrequent contacts

These modified subgroups are illustrated in Figure 12-3.

As has been described here, the process of defining substantively relevant groups and profiling them according to offense and offender characteristics is iterative and may go through several revisions as the policy group becomes more familiar with the size and nature of the offender population.

#### **Examining Current Options and Their Use**

As consensus forms around the substantive differentiations of offenders, the policy group’s attention turns toward sanctioning issues. The profile of sanctioning options described in Chapter 9, Developing a Common Frame of Reference, serves as a basis for examining the range of sanctioning dispositions and durations used for the profiled groups of offenders. The sanctioning options in a given jurisdiction might include any number of the following:

- Sanction 1 — Prison
- Sanction 2 — Jail

As the policy group turns its attention to sanctioning practices, the researcher will analyze the sanctioning practices for each of the profiled groups of offenders. The analysis should first examine the frequency distribution of sanctions given for each of the profiled groups. **The policy group will likely find that a wide range of sanctioning options is used for each of the profiled groups, indicating a lack of consistency in the use of the various sanctioning options.** Figure 12-4 illustrates the distribution the researcher might find. (The letters across the top of the chart represent the offender groups A through L from Figure 12-3. Underneath each offender group is a list of percentages representing the percentage of offenders in the group receiving that sanction.) Offenders are often given more than one sanction; therefore, the percentages for each group total more than 100

**Figure 12-4**

**Representation of the Current Use of Sanctions by Differentiated Offender Groups**

Sanctioning Option	Offender Groups											
	A	B	C	D	E	F	G	H	I	J	K	L
1. Prison		20%	10%	50%	5%			10%	30%		30%	60%
2. Jail		50%	60%	30%	20%	15%		5%	30%	5%	20%	30%
3. Jail with work release	15%	10%	10%	10%	5%	5%	5%	5%		5%	10%	5%
4. Residential facility, nontherapeutic		5%		10%	5%							5%
5. Residential facility, therapeutic		3%	5%	5%		5%			5%		5%	5%
6. Day reporting		10%	5%	15%	5%					10%	5%	10%
7. Home detention with electronic monitoring	20%	70%	10%	10%						5%		10%
8. Home detention without electronic monitoring	20%	5%			10%		5%			10%		
9. Community work service	60%	70%	70%	20%		40%	50%	10%		60%	30%	20%
10. Nonresidential treatment	40%	70%	30%	20%	15%	80%	70%	20%		20%	10%	
11. Fines, restitution, and other monetary penalties	100%	20%	40%	20%		60%	80%	60%	30%	60%	50%	
12. Supervision with frequent contacts		15%	20%	5%	10%	10%	10%	10%	25%	5%	10%	20%
13. Supervision with infrequent contacts	60%	70%	50%	10%	50%	40%	20%	60%		60%	30%	

percent. Thus, for example, of the offenders in Group A (employed drug offenders) 15 percent received Sanction 3 (jail with work release) as a disposition.

#### **Assessing Current Sanctioning Practice**

Once the frequency distribution of the sanctions currently being imposed upon each of the profiled groups of offenders has been described, the policy group can begin the work of judging how well current sentencing practices and sentencing options reflect their goals for the target groups already identified. They should begin by addressing three sanctioning issues:

1. What factors help to explain the sanctioning practices within each profiled group?
2. What do we want to do with each of the groups?
3. What offender groups are not being adequately served by the existing resources?

Answering the first question will provide the group with important information: Can the variations in sentences

within the identified groups be explained in ways that make sense according to our goals and values, or are we dealing with differences for which we have no explanation? The former might lead the policy group to further refine the profiled target groups on the basis of factors that decisionmakers apparently use for sentencing. On the other hand, a finding for which we can discover no explanation will present a host of issues for the implementation of the policy group's policymaking and targeting efforts.

To address the first question, cross-tabulations can be used to show the relationship of sanctions to offenders' criminal histories (i.e., prior felonies by sanction selected for burglary offenders with prior felonies). The relationship between treatment and other needs and sanctioning could be explored (i.e., chemical/alcohol abuse by sanction; employment by sanction; education by sanction,

selected for each of the profiled groups). The relationship between gender and race and sanctions, controlling for criminal history, will undoubtedly be described (i.e., gender by sanction by prior felonies; race by sanction by prior felonies, for each profiled group).\*

To address the second issue, the policy group defines what appropriate sanctioning practice is for the various groups. This issue will be informed by the sanctioning goals and purposes established by the policy group. Sanctioning purposes will probably be further refined by developing sanctioning strategies for each of the groups.

---

**The next step in the analytical approach to targeting entails evaluating how well current sanctioning practices match the policy group's sentencing goals for subsets of offenders. What goals do we have in mind when sentencing particular groups of offenders? Are those goals being met by our current response to these offender groups?**

\*This material appeared in documents prepared for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

For example, the primary sanctioning purpose for first-time property offenders might be reconciliation with the victim and with the community. The sanctioning strategy, therefore, might emphasize monetary restitution and community service. The primary sanctioning purposes for DWI offenders with serious chemical dependency problems might be public safety through either incapacitation or treatment. The sanctioning strategy might emphasize long-term chemical dependency treatment or various types of incapacitation, including license revocation, special identifying license plates, and home detention.

**The third issue**, identifying offender groups that are not being adequately served by existing resources, will benefit from the experience of the policy group members as well as by a careful examination of the frequency distributions of sanctions. The data analysis done previously to profile offender groups will have provided substantial information regarding offender characteristics and needs. These data, together with the information on sanctioning programs gathered previously (as described in previous chapters), can be revisited in assessing the adequacy of current sanctioning practices. (In Chapter 11, *The Experiential Approach to Targeting*, you will find suggestions for tapping the experience of policy group members with specific populations and programs. That discussion will be useful for this effort.)

#### ***Devising the Desired Array of Sanctions***

Three issues remain for the policy group to address:

1. How do we modify existing resources to better meet sanctioning goals and purposes for groups?
2. How should current resources be allocated among the profiled offenders?
3. What new programs might be designed to fill resource gaps?

Once the sanctioning purposes and strategies are refined for the offender groups, the policy group might decide that existing sanctions should be modified to more effectively pursue sanctioning purposes and strategies for specific groups of offenders. Victim restitution might be modified to offer a reconciliation meeting between the offender and victim. Home detention for DWI offenders might be expanded to include monitoring by a volunteer from among the offender's family or neighbors. It is much easier to design an effective program when the purposes of the sanction are focused and clear. In some instances, modification might involve program expansion to accommodate a larger group of offenders.

If the policy group has not already done so, this is the time to take a long and critical look at existing sanctioning resources. The group may already have completed an inventory of programs (that is, a documentation of programs offered and the services they provide), but what is called for here is an examination of the credibility, strengths, and weaknesses of those resources. This does not necessarily mean evaluation research—few jurisdictions are set up to do that level of assessment—but rather an inquiry, using whatever evidence you have access to, into issues like these:

- ***Adequate implementation:*** Does the program deliver the supervision, services, treatment, or work experience that it says it does?
- ***Responsible communication:*** Do the staff keep in touch with whoever is responsible for the case (i.e., the judge, probation officer, etc.) about the offender's success or failure?
- ***Patterns of success or failure:*** Does this program seem to succeed with particular types of offenders or fail with others?
- ***Patterns of success or failure relative to other programs with comparable goals and/or populations:*** Does the program have a particularly good or bad track record for program completion by offenders?

Again, individual interviews with a representative sample of key decision-makers who have experience with these programs (such as judges, prosecutors, presentence investigators, and probation officers) is an effective way to get this information. It will serve as a qualitative supplement to the inventory information obtained from the program itself. (See Exhibits 11-1 and 11-2 in Chapter 11, *The Experiential Approach to Targeting*, for suggested interview formats.)

The aim of this inquiry is primarily to identify the weak links in your array of sanctions. The programs so identified may in fact be doing exactly the right thing, but if they are perceived as inadequate by key decisionmakers they can undermine the success of your entire effort. The point is to learn **how** they are perceived and **why** they are perceived in that way. Then perhaps you can help make them more effective in the eyes of their “consumers.”

This analysis provides the setting in which the policy group can step back and address the second issue, that is, how should current, limited correctional resources be allocated? How should the limited treatment slots, bed spaces, supervision time, and other program slots be allocated among the groups of offenders? For example, if the jail has 200 beds that can be used for sentenced offenders, and you anticipate that the average jail time served will be 90 days, those 200 jail beds can accommodate 800 of the offenders sentenced during that year. Which of the 800 offenders should be targeted for those beds? Emphasis would probably

---

***Next, the policy group must examine the modifications that can be made to the current sanctioning system to ensure that sentencing goals are met for defined offender groups. Can we modify our sanctioning practices to more appropriately handle these offenders within the range of our current resources? Are there gaps in our current array of sanctions?***

**Figure 12-5**

**Representation of Modifications Made to the Use of Sanctions by Differentiated Offender Groups**

Sanctioning Option	Offender Groups											
	A	B	C	D	E	F	G	H	I	J	K	L
1. Prison		5%		30%		5%		5%	30%		30%	60%
2. Jail		10%	20%	20%	5%	40%		20%	10%		5%	20%
3. Jail with work release	5%	10%	10%	5%		10%					15%	
4. Residential facility, nontherapeutic		15%			12%							10%
5. Residential facility, therapeutic		15%		5%		15%				5%		10%
6. Day reporting				5%	10%	10%					20%	10%
7. Home detention with electronic monitoring						20%						
8. Home detention without electronic monitoring						10%						
9. Community work service	90%	70%	80%	50%	50%		90%			90%	60%	
10. Nonresidential treatment	30%	70%	30%	20%	20%			80%		60%	40%	
11. Fines, restitution, and other monetary penalties	100%		80%	90%	30%		90%		30%	80%	40%	
12. Supervision with frequent contacts		15%	20%	10%	15%	30%		20%	25%	10%	10%	30%
13. Supervision with infrequent contacts	30%							40%		40%	30%	
14. New program					*		*		*			

\* Categories E, G, and I also use new programs.

fall on offender groups for whom the primary sanctioning purpose is incapacitation or possibly on offender groups for whom the primary purpose is substantial punishment. Perhaps there are several thousand offenders in groups with incapacitative or punitive sanctioning purposes. More specific targeting might indicate which offenders or groups of offenders might be amenable to other sanctions that are incapacitative or punitive and help to differentiate those offenders from the ones for whom jail is the most appropriate and cost-effective sanction. Similar analysis and targeting are necessary for all correctional resources.

**The final step in the process is to ensure that this work is translated into policy. How can we ensure that offender subsets are sanctioned appropriately? What policies and practices must we put into place, and how will we monitor them, to safeguard our system?**

The choices that ultimately allocate limited resources will be guided by the priorities, sanctioning purposes, and targeting decisions established by the policy group. There are no methodological tools that can make those substantive allocation decisions for the policy group. However, the policy group might wish to avail itself of methodological tools, such as impact assessment programs or sentencing simulations, that allow policymakers to “play out” various sentencing scenarios and see what the resulting impact on corrections populations will be. Exhibit 12-1 in this chapter shows a diagram of a structured sentencing simulation model. Data on the population of offenders can be fed into the model, and the offenders can be “sentenced” in accordance with any sentencing policies or practices the policy group wishes to explore. The model calculates the resulting prison, jail, supervision, program, and revocation populations and reports the size of those populations as well as their composition by race, gender, age, offense type, and other relevant factors.

This type of analysis can have enormous value in illustrating the impact of various revocation practices on corrections populations, for example. It can also indicate instances when sanctioning policies clearly outpace correctional resources. One of the benefits of running impact assessments and simulations is a firm grounding in the realities of resource limitations.

When desired sanctioning policies outpace the resources for implementing those policies, the policy group might want to rethink the sanctioning policies and further prioritize the use of limited resources. The policy group might also want to pursue a strategy of increasing the resources available, either through expansion of current programs or through the design of new programs, if additional resources are deemed necessary and are obtainable. New programs would probably be considered only if the targeting analysis identified a group of offenders inadequately served by the current array of programs.

After the policy group has completed this intensive profiling analysis; articulated and refined sanctioning purposes for specific subgroups of offenders; further specified targeting criteria; prioritized the use of current limited resources; and examined the need for program modification, expansion, and possible design of new programs, sanctions for our hypothetical groups might be implemented as shown in Figure 12-5.

### ***Implementation***

Successful targeting is the key to effective, policy-driven intermediate sanctions. Targeting will be successful,

however, only if the policy group is able to implement policies that put the targeting into practice. It is not enough for the policy group to determine offender groups, choose the criteria that define them, and identify (and perhaps create) appropriate sanctions for each group. A method or methods must be found to translate those sanctions into the sentencing policy and practice of the jurisdiction.

Chapter 7, Creating Sentencing Policy, offers a thorough discussion of the essential elements and considerations in the development of policy. The mapping that your team has done of the formal and informal sentencing decision process in your jurisdiction will be invaluable in guiding you through the implementation process.

### ***Conclusion***

Targeting analysis and coordinating sanctioning practices with corrections resources are ongoing efforts. Sanctioning practices and program admissions must be continuously monitored to ensure that sanctions are consistent with the goals and purposes articulated for defined subgroups of offenders. Once this process is undertaken, it is essential to establish an ongoing mechanism for monitoring the offender population, confirming the policy group's goals in sanctioning that population, and ensuring that appropriate resources are available and utilized for designated offenders.

## An Analytical Approach to Targeting

---

### I. **What Is Targeting?**

Targeting is the process of identifying offender groups by their profiles—those features that distinguish one group of offenders from another—in order to choose appropriate sanctions for them.

### II. **Why Is Targeting Important?**

Targeting is an integral part of a policy-driven intermediate sanctions process. To describe sanctions as policy-driven implies that each sanction has been chosen to serve a particular function in an overall sanctioning system and that an express purpose has been defined and a population specified for each. This is accomplished through the targeting process.

### III. **Who Is Involved in the Targeting Process?**

The process of targeting requires the active, substantive leadership and guidance of the policy group. The policy group's discussions and choices about goals, values, and desired outcomes for particular offender groups interact with an empirical analysis of data to form an analytic approach to profiling and targeting offenders.

### IV. **How Is Targeting Accomplished?**

- The steps in the targeting process reflect movement back and forth between deliberations and decisionmaking in the policy group and the data collection and analysis of researchers.
- The steps fall into six general sets of activities.

### V. **What Are the Steps of the Targeting Process?**

1. The first step in the analytical approach to targeting is to collect and compile data on all sentenced offenders. The following are the kinds of questions a policy group might have:
  - Who are the offenders flowing through our system?
  - What are their characteristics?
  - How are they the same and how are they different?

**An Analytical Approach to Targeting**

- 
- 2.** The second step in the targeting process is to define and profile substantively relevant groups of offenders. Substantively relevant groups of offenders are subsets of offenders for whom like sanctioning responses are appropriate.
    - What characteristics of offenses and offenders help us distinguish among offender groups for purposes of choosing sanctions?
    - Which factors do not help us distinguish among offender groups?
  - 3.** The third step entails examining the current use of sanctioning options relative to the newly defined subsets of offenders.
    - How are these offenders currently being sanctioned?
    - How consistent are our current sanctioning practices with respect to our specified offender groups?
  - 4.** The next step entails evaluating how well current sanctioning practices match the policy group's desired sentencing goals for subsets of offenders.
    - What sentencing goals have we chosen for particular groups of offenders?
    - Are those goals being met by our current response to these offender groups?
  - 5.** Next, the policy group must examine the modifications that can be made to the current sanctioning system to ensure that sentencing goals are met for defined offender groups.
    - Can we modify our sanctioning practices to more appropriately handle these offenders within the range of our current resources?
    - Are there gaps in our current array of sanctions?
  - 6.** The final step in the process is to ensure that this work is translated into policy.
    - How can we ensure that offender subsets are sanctioned appropriately?
    - What policies and practices must we put into place, and how will we monitor them, to safeguard our system?

## Program Design

*Madeline M. Carter\**

**Introduction** Like the rest of this handbook, program design is a subset of its overall, broader mission to help you develop programs to help your community make meaningful changes. This chapter is designed to help you understand what is involved in the process of program design. Briefly, an introduction to the concepts involved is provided below.

In Chapter 12, we identified key participants in the program design process and the role each plays in the development of a program. In this chapter, we will focus on how to move from the initial planning stage to the final product. We will also discuss the essential elements of sound program design, the importance of defining outcomes, and the need to evaluate the program's effectiveness.

Since the purpose of effective programming is to meet a clearly defined problem, the first step in the process of program design is to identify the problem. This is done by examining existing data and information available to determine what needs exist and what can be done to better serve them. This information can then be used to identify the best approach to solving the problem.

The primary methods of identifying problems are through surveys, interviews, and other forms of data collection. These methods can be used to identify the needs of the population and to determine the best way to address those needs.

### **The Essential Elements of Sound Program Design**

While sound program design is not particularly complex, it does require patience. In most circumstances, programs are developed in response to a perceived need—on the part of a community (a jail crowding crisis, perhaps), a category of offenders, or both. Those needs may have gone unmet for some time, so pressure may have grown for a quick result. Therefore, when the time comes to begin putting the program together, there is a natural desire “to just do it.” The common wisdom supposes that the problem is there and the response will be obvious.

Budgets being what they are, the agency or team responsible for the design may not have had such an opportunity for a long time. This situation will increase the pressure to get the job done quickly.

The effort, however, is bound to be more effective if the approach is more methodical than most of us would like. Developing a successful program involves working through the following steps:

1. **Agreeing about the program’s primary purpose.** This agreement must come from the policy team: the decisionmakers whose decisions will drive its use. The program may not have a *single* purpose, but its *chief* goal must be spelled out explicitly.
2. **Defining the specific program outcomes that are desired.** The outcomes are derived from the program’s purpose, but are the

specific, measurable objectives that will signify success.

3. **Profiling precisely the intended population.** What are the specific characteristics that define the subgroup of the total offender population for whom this program is designed and intended?
4. **Choosing the program elements that are most likely to produce the desired results.** This requires the careful matching of desired outcomes with specific components of programming.
5. **Deciding how access to the program will be managed.** If the intended population has been carefully and precisely chosen, mecha-

© Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

\*Some of the material covered in this chapter was developed for the project by Mary Mande, Ph.D., MJM Consulting Services, Boulder, Colorado.

nisms must be in place to ensure that the program serves or receives *only* that population.

**6. Identifying the administering agency and the program's possible impact on the rest of the criminal justice system.** The criminal justice system in even the smallest jurisdiction is a complex arrangement of agencies, decisionmakers, policies, and practices. What is the logical fit of this program in that arrangement? How might it change those dynamics? In what ways does the system need to change to accommodate the new program?

**7. Determining the total cost.** In addition to the actual operating and administrative costs, programs can place other resource demands on the system by virtue of issues such as anticipated failure rates and impacts on other parts of the system.

#### ***The Advantages of This Approach***

Pressure may exist to leap over at least some of these steps, for reasons described earlier. However, the tremendous advantages to this approach are worth keeping in mind:

- Securing broad agreement on the program's purpose ensures that those who will determine its use (that is, judges, prosecutors, defense attorneys, probation officials, and law enforcement officials) understand the program's goals and understand what it is supposed to do and what it is not supposed to do. It makes it less likely, therefore, that they will be disgruntled later because of erroneous expectations.
- Defining the specific outcomes that the program is designed to achieve provides the measures by which it can be evaluated for effectiveness. Being forced to spell out exactly the basis on which the program will be judged can also force the designers to be more realistic about their (and everyone else's) expectations.

- A specific profile of the targeted population enables planners to determine the size of the potential offender group that will be eligible: How adequate is the program's planned capacity given the pool of potential candidates? If the pool turns out to be too large, the characteristics probably have not been drawn finely enough. If it is too small, perhaps the program is not needed or the criteria are too restrictive.
- Matching the profile of the targeted offenders to the desired outcomes is another method for judging how realistic the program's objectives are: Is it reasonable to expect to achieve these outcomes for **this** group of offenders?
- By matching program components to the specific outcomes desired, the planners make the best use of resources. Using only those elements that contribute to achieving the intended objectives means eliminating those that do not—and their cost.
- Managing access to the program ensures the greatest chance of success and the best use of resources: The program was designed for a specific group of offenders and is likely to be ineffective for others. Its use for others, therefore, is likely to waste resources.
- Thinking through all of the consequences of placing this new component into the criminal justice system enables the policy team to anticipate what other changes might have to be made in the system to maximize its chances for success. It also makes unpleasant surprises less likely and adds credibility to the policy team.

In the end, credibility is the chief benefit to be derived from this kind of careful planning: credibility for the program and for the policy team that planned it.

#### ***Defining the Target Population***

Sound program design rests on a foundation of sound information about the population for whom the program is being developed. Chapter 12, *An Analytical Approach to Targeting*, describes the process of specifying offender subgroups for new or redesigned programs. This information is vital to determine not only **who** the offenders are, but also **how many** of them there are.

#### ***Who They Are***

The population targeted for the program in question has two dimensions: first, the set of characteristics that constitute the criteria for inclusion in the group (that is, those items that distinguish this group of offenders from among the universe of all offenders for purposes of the sentencing decision), and second, the other features that characterize this population.

The first set of data items is critical for determining who is eligible for this sentencing option and who is not. These items define the group toward which your efforts are directed. The second set of data establishes the range of individuals who fall within that category of offenders and provides essential information for program design. This set includes data about age, gender, education, and physical and mental disabilities, among other things. The program can easily fail if it is not responsive to the particular needs or situation of the offenders it will serve. For example, women offenders are likely to have child care issues, while illiterate offenders may have difficulty with some kinds of training or treatment programs.

As discussed in Chapter 12, it is also important to assess how the identified offenders are currently being sentenced; the proposed new option should bring the team closer to achieving its sanctioning goals for this group.

#### ***How Many There Are***

A program developed in one state provides a good example of what can happen when a program is designed without a thorough analysis of the offender population for which it is intended. In 1991, the

state implemented a boot camp program for young (18- to 25-year-old) “low-risk” offenders sentenced to the state department of corrections. The legislation was passed and the program established before the targeted population was analyzed in terms of the precise characteristics of the group (its profile) or the number of individuals in the system represented by this profile. As a consequence of this oversight, too few offenders met the selection criteria for the program in its first year of operation.

The following year, the legislature amended the boot camp legislation to expand offender eligibility to 18- to 30-year-olds. The state did not consider how this change might affect the design of the boot camp program or even if the boot camp model, designed for the younger population, would be effective for the older inmates now in the eligibility pool.

Another example illustrates this point as well: In 1990, a county established an electronic monitoring program to relieve jail overcrowding. Officials were under pressure to respond quickly to the crowding problem and developed the program’s eligibility criteria and its elements before completing an analysis of the population to be served or agreeing on the program’s objectives. The program was implemented and immediately met with capacity problems. As with the boot camp, the response was to modify the program’s criteria, expanding the pool of eligible candidates; that is, expanding the population to fit the space, rather than designing the space to fit the population.

In addition to the capacity issue, a second major stumbling block arose: This program was designed by a single agency to reduce jail crowding without involving other agencies, targeting an appropriate population, or engaging in a discussion of sanctioning goals for the offenders that the program would serve. As a consequence, the program failed the acceptance test. Policymakers, program staff, and offenders alike voiced misgivings that were difficult to address without a clear vision of who the program was designed

to serve and to what end. When the time came to address the lack of candidates for the electronic monitoring program, the agency did not know whether the problem was that the criteria produced too few eligible offenders or that policymakers and offenders were unwilling to use the program.

*By themselves, programs cannot be solutions. Programs are tools; they will perform successfully when they are chosen carefully to serve a particular function in an overall sanctioning system that has clear aims.*

### ***The Limitations of Programs***

In each of these examples the jurisdiction was hooked by a great-sounding idea—boot camps in the first, electronic monitoring in the second—and seized upon it as a solution to what seemed a difficult and pressing problem. These two jurisdictions are not alone. In states, counties, and cities across the country, policymakers are scrambling to find “the solution”—to crowded institutions, rising corrections costs, and rising numbers of more dysfunctional offenders. Although the problems may be common to most jurisdictions, each jurisdiction is unique in important ways: the sources, form, and dimensions of its problems; projected local trends; the sentencing laws, structure, and practices that are in place; and the resources that may be available to respond. Chances are there is no one “solution.” Any set of remedies that has a possibility of succeeding will emerge from a full examination of all aspects of the problem for which it is sought and will probably be unique to the jurisdiction.

There is another common factor in these two examples: ***By themselves, programs cannot be solutions.*** Programs are tools; they will perform successfully when they are chosen carefully to serve a particular function in an overall sanction-

ing system that has clear aims. You cannot build a fence with just a hammer; you need materials, other tools, a plan or blueprint, and a skilled person to use the tools and read the plan. ***Informed and purposeful*** program development results in programs that are planned to complement one another, that are designed for targeted groups of offenders, and that are constructed to achieve sentencing goals chosen specifically for that group of offenders.

### ***Specifying the Program’s Primary Purpose***

Sanctions exist because as a society we think that there is a benefit to be gained or a purpose to be served by responding to individual violations of the law. Sanctioning goals spell out and define those purposes. In putting together the components of a sanctioning option or program, the critical step is to specify the ***chief*** goal that it is intended to achieve. Defining its purpose will drive the choice of strategies and components that make up the program.

As the program development proceeds, it may be desirable for a number of reasons to include program elements that serve some secondary goals, but the primacy of the first purpose should be clear. For example, the probation department in one large city was designing a day-reporting center as a stronger form of supervision and incapacitation than intensive probation. The center was intended to provide a chiefly incapacitative response to difficult-to-supervise probationers, that is, to remove them from the streets for many hours each day. However, when the probation department began looking at how they were going to keep 80 offenders occupied all day, it was evident that some rehabilitative programming was a useful way to fill the time: GED classes, employment counseling, life skills classes, and the like. Those activities were not ***the purpose*** of the center; they were, rather, a response to the problem of filling and structuring participants’ time. The day-reporting center was not a counseling,

**Exhibit 13-1*****How Objectives Shape Programs: The Day-Reporting Center***

Throughout this chapter, it has been stressed that a clear understanding of goals and objectives is an essential starting point for good program design. One implication of that tenet is that a program's goals and objectives will have a much more profound effect on the program itself than will the simple selection of a program type or title. Programs with similar names and outlines may actually be designed quite differently to achieve different goals. An illustration using a day-reporting center model is provided.

<b>Program "A"</b>	<b>Program "B"</b>
Program Objective: <b>Punishment and Control</b>	Program Objective: <b>Rehabilitation</b>
<b>Activities:</b> are structured for minute-by-minute accountability and may include burdensome and unpleasant activities.	<b>Activities:</b> are designed to define and address the factors identified as contributing to the offender's criminal activity.
<b>Staff:</b> responsibilities are heavily weighted to security and monitoring activities.	<b>Staff:</b> responsibilities are heavily weighted to program and counseling activities.
<b>Facility:</b> is designed and located for maximum ease of surveillance and control of movement.	<b>Facility:</b> is designed to provide areas conducive to counseling, group discussion, and practice of positive leisure activities, and is located in the community to provide access to community resources.
<b>Programming:</b> is designed to fill all hours during which the center is open.	<b>Programming:</b> is therapeutic and educational, and allows the offender some choice; emphasizes modeling positive behavior in the community.
<b>Progress:</b> is determined by the time spent on, and compliance with, decreasing levels of control, as well as completion of tasks or assignments.	<b>Progress:</b> is determined by completion of specific programs and by achieving milestones in the community (e.g., securing work, going to school, supporting a family).
<b>Interventions:</b> occur for the purposes of achieving program compliance; interventions involve increasing control or imposition of unpleasant assignments.	<b>Interventions:</b> occur as a response to program failure; program adjustments are made to better meet the needs of the individual offender.

treatment, or education program; its aim was to remove certain probationers, those identified as at high risk for reoffending, from the streets for eight to twelve hours a day.

***Identifying the Objectives***

Specifying the purpose of a chosen program as concretely as possible means specifying its objectives as well. In the case of the day-reporting center cited above, the purpose of the center is to incapacitate certain offenders. But incapacitation has many forms and many degrees. The program's objectives will define more precisely what level and type of incapacitation are desired. For example, are the offenders to be under constant surveillance or just occupied in a structured way? Should the surveillance be all the time or just at certain times of the day or night? The answers to these two questions will provide planners with important information on program options. For example, if the objective is to keep offenders occupied for some number of hours, then they might be permitted to look for jobs and go to work every day. If constant surveillance is the objective, ways must be found to keep offenders busy at the center or perhaps on work crews operating out of the center.

Similarly, a program objective of constant surveillance has implications for staffing, security, and the location of the center.

Objectives will vary widely depending on the targeted population. For example, a policy team creating a treatment program for sex offenders may have rehabilitation as its chief goal for the program, but may also want to prevent contact between offenders and vulnerable populations. Such a program would likely combine therapeutic approaches with surveillance, curfews, or perhaps home confinement.

Beginning the design process with a clear purpose and objectives enables planners to choose the specific strategies and tools that will meet those ends. Such an approach permits designers to feel confident that they have responded to

specified needs without engaging in the kind of component overkill that bloats budgets and revocation rates. This approach tailors program design to the goals, population, and fiscal realities of a particular jurisdiction rather than buying an existing design framework off the rack.

#### **Why Not Seek All Purposes?**

When asked to specify a primary goal or purpose for a program or an agency, policymakers often respond that they want elements of all of the major sanctioning goals included in the effort. Unfortunately, this position is likely to guarantee failure for the enterprise under consideration.

**Many of the purposes of sentencing are, when operationalized, contradictory.** If programs are carefully crafted, their planners know toward what end all efforts are directed. Consider the day-reporting center case described previously. The probation agency might have decided that its greatest need was for a program for probationers at high risk of reoffending because of drug abuse problems. The agency might still have chosen a day-reporting center, but it would look for therapeutic program elements that addressed drug addiction and would make choices about other program components according to how well those components supported the chief goal, that is, treatment. Work crews, for example, might be inappropriate because long hours away from the center might interfere with the therapeutic regimen. Decisions on the kinds of staff and the staffing pattern would also be quite different.

In both cases, the “program” is called a day-reporting center, but these are two very different mechanisms used to achieve different purposes with distinguishable (although overlapping) populations.

#### ***Revisiting the Reason You Are Designing This Program***

Once the policy team has identified the program’s purpose and objectives and has targeted a specific population, the team must take the time to assess how well the new option responds to the original problem or goal. This typically means examining the current sentencing practice for that population.

For example, if the team’s primary purpose in creating the new program is to relieve jail crowding, then it is necessary to determine not only how many of the targeted offenders are sentenced to jail, but also how many are on probation or in prison. If this analysis reveals that a number of the targeted offenders are on probation and in prison, it will be difficult to ensure that only the targeted offenders in jail—and not those on probation or in prison—end up in the new program.

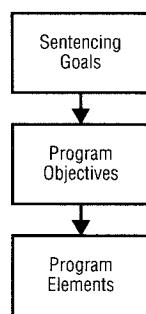
The program itself may be well designed, the population well defined, and the intervention appropriate and effective. But if it does not achieve its intended purpose, in this case to reduce the jail population, then it will not be a success.

#### ***Choosing Appropriate Program Elements***

Once program objectives are determined, the team can begin to craft the detailed program elements that will form its structure. Just as program objectives are drawn from sentencing goals, so must program elements be drawn from these objectives. At this stage, planners are choosing the interventions, strategies, and activities that are most likely to achieve the objectives desired for this group of offenders. In many cases, agreement will be easy; in others, the team may be less sure.

As program elements are considered, planners will find themselves visiting and revisiting the question of objectives. If we require weekly random urinalyses, are we trying to judge progress in reducing drug use, deter participants from using for fear of getting caught, or weed out failures from the program? (How is failure defined?) When choosing assignments for community service work crews, are we selecting jobs for their usefulness to the county, for the opportunities for offenders to develop skills, or for their unpleasantness? Why do we have a requirement for attendance at Alcoholics Anonymous and Narcotics Anonymous five days a week—is it intended to be therapeutic or is it a way to keep offenders occupied?

By taking care to choose only those components that meet stated objectives for the sanction, planners can avoid one of the most common pitfalls of program design; the tendency to add on one program element after another in the belief that if some is good, more is better. There are several reasons to avoid this tendency in program development. First, it is costly. Correctional resources can be spread only so far and priorities must be established. Second, programs with too many programmatic elements may result in a higher offender violation rate—the more requirements there are, the greater the opportunity to fail. Program staff must then decide whether or not to act on the violation. Such action is important if the offender has violated program components that are key to meeting sanctioning goals. However, violation of extraneous program components may result in a higher program failure rate, increasing the number of violations the court must handle and straining jail capacity. This result is counteractive to jail reduction efforts, as an offender may be incarcerated for program failure, sometimes for a greater period of time than if he or she had been sentenced to jail for the original offense and never placed in an intermediate sanction program.



## **Key Administrative Issues in Program Design**

In addition to the substantive issues related to goals, objectives, and strategies, several administrative issues are critical to sound program design.

1. Where in the sanctioning system will the program fit?
2. How is access to the program gained?
3. How does the program fit within the rest of the system?
4. What are the cost implications of the program?

The policy group's work with respect to mapping the current system, as described in Chapter 9, Developing a Common Frame of Reference, will prove helpful in considering the issues that follow.

### **Where Does the Program Fit?**

All too often, the program design is taken on by the agency designated to administer it, the administration of the program having been the first decision made. However, establishing the placement of a program within a system of justice affects how the program is ultimately administered. The following are some considerations in determining the appropriate placement of the program:

- Which part of the system has experience working with the targeted population and is in a position to integrate the program into the array of services (such as pretrial services, probation, corrections, etc.)?
- Which part of the system allows for the earliest point of intervention? For example, to design a program for low risk offenders but place the program under the control of corrections, where entrance to programs can be gained only through jail admission, may not serve the best interests of either the system or the offender.
- Will access to the program be limited in any way if a particular agency administers it?

*By taking care to choose only those components that meet stated objectives for the sanction, planners can avoid one of the most common pitfalls of program design: the tendency to add on one program element after another in the belief that if some is good, more is better.*

### **Who Has Access to the Program?**

With an understanding of what the program design might look like in terms of sanctioning goals, program objectives, and program elements, the issue of how to place offenders into this new resource becomes important. There are several major issues on which the policy group must agree:

- What system actors will have direct access to the program? For example, will the court sentence directly to the program? Can an individual be administratively placed (reclassified) into the program by probation or corrections? Will an agreement by several parties regarding the offender's appropriateness for the program be necessary prior to referral or admission?
- Who will ensure that the appropriate offenders are placed in the program?
- Will the entire universe of targeted offenders participate in this option or only some? If only some, which ones? How will they be distinguished?
- Who will screen offenders to ensure that only targeted offenders gain access to the program? To whom will the results be reported? How long will it take? How will this process be incorporated into the existing case processing system?
- What will be done when an inappropriate referral or commitment is made to the program (i.e., outside the profile of the targeted population)?
- Will the program be voluntary? If so, what sanctioning options are appropriate for the offender who elects not to participate?

### **How Does the Program Fit?**

Having defined the location of the program in the justice scheme, it is important to look at existing policies and practices in the system to understand whether a need exists to create or change practices that will

facilitate the appropriate use of the program. The policy team's experience with mapping the formal and informal processes will be invaluable in this task. Reviewing the system flow chart and examining the following issues will be instructive:

- At what point on the flow chart will referral and admission to the program take place? Who is involved in the decision? What individual office policies or practices may be obstacles?
- If program resources will be shared with existing programs, how will this occur? Does this affect the decision on who administers the program?
- What programmatic responses to violations will involve other parts of the system (such as movement to a higher level of security) and what implications does this have for the administration of the program? Are responses that include other agencies (such as the use of the Sheriff's Department in absconder cases) consistent with the policies and resources of the other departments?
- What impact will a revocation from this program have on the larger system? How can that process be designed to be compatible with the practices of other offices and yet meet the efficiency needs of the program? What administrative changes might be necessary in the affected agencies?

*A good place to look for guidance on choosing appropriate interventions and strategies, and many other issues as well, is the National Institute of Corrections Information Center (303-682-0213; toll-free 800-877-1461). Staff there can provide program descriptions and evaluations, as well as contacts with colleagues in other jurisdictions.*

**Exhibit 13-2**

***An Analytical Approach to the Examination of Correctional Options***

As a part of the program design process, many jurisdictions visit existing programs in other localities. Listed below are some questions to consider when comparing your own programmatic needs to the program options available elsewhere. These questions are designed for groups that have followed the process outlined in Chapter 12, An Analytical Approach to Targeting, and have a fairly detailed understanding of their own offender populations and the sanctioning options available at home.

1. How does this program fit into an existing array of sanctions? What aspects of the program determine how it fits? In considering these questions, look to the goals of the program and the population it is intended to serve.
2. What are the program objectives? Are they tied to articulated sentencing goals? Are they the same as ours?
3. What is the targeted offender population for which this program was designed? What population of ours would be suitable for this program? Is that population the same or different? What are the implications of that?
4. What are we doing now with the group of offenders in this program? How does what we do with these offenders compare to what they are doing?
5. How do the program components relate to the stated objectives of the program? Are there any secondary program components?
6. If there are both primary and secondary program objectives and components, is it clear which are primary and which are secondary? Is this prioritization also clear when it comes to program administration, such as in the handling of program violations or noncompliant behavior? What are the cost implications of the secondary objectives? Are they worth it?
7. What conditions existed that were essential to the establishment of this program (such as a population of offenders that was not being appropriately handled, a working relationship among key actors, the availability of funds, etc.)? Are those conditions necessary for program success? Do they exist in our jurisdiction?
8. What are the program's outcome measures? How has success been defined? What outcome studies have been done? How might we define success differently, and what are the implications of that?
9. Has a monitoring system been put into place to ensure the integrity of the program design? What has been learned to date?
10. How are offenders placed in the program? Must they be approved in advance by a reviewing authority? Who are the decisionmakers involved? How is access to the program gained? For example, does admission bypass the jail system, or is admission gained through the jail system? What does this imply about the offenders placed in the program? How would we do it in our jurisdiction?
11. Who administers the program? Would the same agency administer ours? What impact, if any, would a different administering agency have on the program? Who would administer it in our jurisdiction? What is the capability of that agency to handle the work load at this time? If the agency is too burdened to give this its full attention, are there ways that we can help?
12. How are program failures handled? What is the impact of this method of handling failures on the program? On other parts of the system?
13. Before considering developing a new program, is there something in our current system that can be adequately adapted to meet our goals?

## **Determining Costs**

Program elements generally dictate how expensive a program will be. Staff are required to carry out or oversee the offender's participation in the program elements, and staffing costs represent the largest portion of most program budgets. This raises several issues:

1. **Use of existing resources.** In determining how program elements will be implemented, consider whether other agencies are able to provide services or resources to the program. This reduces costs and limits duplication of resources.
2. **Use of volunteers.** A second consideration is whether volunteers and interns can fulfill some of the agency's functions. Will the payoff be worth it in terms of the time it takes to recruit and train what may be temporary help?

3. **Objective intensity.** In order to fulfill the stated program objectives, how intensively must each program component be staffed?

Other significant issues to be considered with respect to the cost of the program are:

4. **Comparative costs.** How do the costs of the program compare with what is currently being done with the population? If the new effort is more costly, is it worth it?
5. **Proportionality of costs.** Are the costs of this program proportional to the expenditures for other offender groups relative to the seriousness of their offenses, or the degree of risk they represent? Are resources weighted in the right places?

## **Conclusion**

Thoughtful program design is best accomplished when it is done within the context of the work of an operating policy team and in response to the identification

of a gap in the current sanctioning system that cannot be appropriately addressed by modifying existing resources. A determination that current sanctions cannot adequately respond to a particular offender group implies that the policy group has thoroughly examined the composition of the offender group and has agreed on the appropriate sanctioning goals for the group. Beyond these policy decisions, successful program design requires that organizational issues be addressed (such as who will administer the program) and that operational issues be carefully considered (such as the proportionality of the cost of the program). Most important, however, is the need for shared thinking around what outcomes the program is designed to provide, for it is only from this starting point that a program with integrity, one that can be evaluated based upon its goals, can be developed.

**Program Design**

---

**I. The Essential Elements of Sound Program Design Include:**

- A.** Securing agreement about the program's primary purpose;
- B.** Defining the desired program outcomes;
- C.** Profiling the intended population precisely;
- D.** Choosing program components most likely to produce desired results;
- E.** Deciding how access to the program will be managed to preserve targeting goals;
- F.** Identifying the administering agency and the program's likely impact on the rest of the system; and
- G.** Determining the cost implications of that impact.

**II. The Chief Advantage of This Approach Is the Credibility It Brings to the Program and to the Policy Group. It Produces Credibility Because:**

- A.** Agreement on program purpose prevents future dissatisfaction of key actors because of unclear expectations;
- B.** Defining outcomes creates a sound basis for evaluation;
- C.** Profiling targeted offenders permits planners to generate more accurate estimates of potential demand;
- D.** Profiling also grounds efforts in reasonable expectations by matching identified groups of offenders to specific chosen outcomes;
- E.** Choosing program components for their anticipated results makes the best use of resources; and
- F.** Determining the likely impact and costs of the program helps anticipate consequences elsewhere in the system.

## Bringing the Process Home: Making It Work In Your Agency

Dorothy Faust\*

---

**Introduction** When we speak of the intermediate sanctions process, we tend to emphasize a systemwide perspective because such a perspective has so clearly been neglected in the past. It is equally important to understand, however, that the individual agencies that come to the table to work collectively toward the better use of intermediate sanctions cannot continue to operate their own agencies on a "business-as-usual" basis. The intermediate sanctions process requires that individual actors take responsibility for how their own agencies operate and undertake change that will support the systemwide effort.

This chapter speaks directly to the types of changes that must be made within an individual agency in order to operate more directly in support of the rational use of intermediate sanctions.

Individual agencies play an important role in the intermediate sanctions process. This chapter, addressed to directors of agencies that are engaged in this process, provides a "to-do" list for bringing about the internal changes connected with that process. Because the policymakers for whom this chapter is designed are likely to be members of the intermediate sanctions policy group, the concepts presented here are not new. Their specific application to the agency setting, however, may offer a helpful perspective to administrators committed to supporting the jurisdiction's effort through the actions of the agency they lead.

---

### **Policy Direction**

#### **Define the Overall Goal.**

One of the central tasks of any jurisdiction's intermediate sanctions project will be to agree on a set of goals and values aimed at the more effective sanctioning of offenders. The goal of each criminal justice agency, then, should be to ensure that its mission is compatible with this systemwide intermediate sanctions effort. To achieve this goal, individual agencies must address the issues that follow.

#### **Develop (or Evaluate) Your Agency's Mission Statement.**

Your agency may already have a clear mission statement. Whether you evaluate your existing mission statement for compatibility with the systemwide intermedi-

ate sanctions effort or develop a new statement, ensure that all levels of the agency's staff are involved in the process. Mission development involves uncovering values and being clear about what the agency is working to accomplish. While directors are ultimately responsible for the mission and goals of their agencies, staff involvement in the process of articulating them reinforces the collaborative effort required to fulfill those goals, uncovers hidden agendas, and ultimately attains clarity at all levels. Agency directors, deputies, managers, and line staff alike should have the opportunity to question, ruminate, and criticize. Each must understand the direction of the agency in order to commit to it and make it a part of everyday decisionmaking. The involvement of all levels of staff will reinforce the notion that the goal of the agency can be met only if each individual contributes to the effort.

It is important to remember that the process of defining and refining the mission never ends. The goals and values

that anchor the mission must be revisited periodically, from the top ranks of the agency all the way to the bottom. Such an effort will serve as a constant reminder that this is a team effort.

#### **Reinforce Your Agency's Identity Around Your Mission.**

Your agency's identity should merge with its mission. From the director's budgeting and hiring decisions to each probation officer's supervision plan for a particular client, choices and strategies at every level should be grounded in the mission. As this happens, the agency should begin to look different. The manager of a probation agency, for example, can look for progress in the flow of documents that routinely cross his or her desk:

---

© Center for Effective Public Policy, 1993.  
The National Institute of Corrections and the State Justice Institute reserve the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use all or any part of the copyrighted materials contained in this publication.

\*Dot Faust is the Programs Director for the Maricopa County (Arizona) Adult Probation Agency. Her experience as a probation executive who has successfully grappled with the intermediate sanctions process within her own agency comes through clearly in this chapter.

- Recommendations for prison at violation hearings may decrease as recommendations for creative interventions for noncompliant behavior increase.
- Officers should begin to articulate progressive punishment principles in client supervision plans, focusing on solving problems rather than catching mistakes.
- Staff discussions of the mission may begin to surface in minutes of unit meetings. Some resistance to change is to be expected at first, but this is an indication that the message is filtering through the ranks.

In making decisions, the management team should refer to the mission and values for guidance. The mission should affect the development of agency policy, where budget cuts are made, and how training courses are taught.

Other city or county agencies will eventually begin to identify your department or agency with its mission. They will know that your corporate personality has been formed around some specific principles.

#### ***Use the Agency Budget as a Mechanism for Carrying Out the Mission.***

Set budget priorities to support the mission. Tie budget line items to programs and services that further the agency's goals. Budget items that do not support your objectives probably are not necessary.

Take calculated risks to move forward. Be willing to spend money on program evaluation rather than on more traditional expenditures; consider reallocating resources to allow for pilot projects. If any of these pilots fail, reward the effort and initiative without regrets or apology. You cannot expect to move forward if you are not willing to take some risks.

#### ***The Need for Ongoing Communication***

##### ***With Your Staff***

Make communicating with your staff a priority. Use staff meetings and individual evaluation conferences as opportunities to stress the agency's mission and reinforce

those whose performance furthers that mission. Keep your staff informed of new thinking by circulating relevant information, such as journal articles, meeting minutes, agency newsletters, and management information. Help your staff realize that each one, individually, contributes to the accomplishment of the agency's goals. Their investment is no small part, and they should know it!

##### ***With the Community***

Recognize your role in educating the public about what works and what does not in criminal sentencing. As an agency head, you must accept responsibility for some of the misinformation and prejudice that guide public opinion and legislative policy. For too long, we have overlooked the value of initiating communication with people outside the criminal justice system. Even worse, we have not had the confidence to believe that our practices would hold up under close public scrutiny or formal program evaluation.

Studies have shown that citizens support the principles of intermediate sanctions when they understand what these sanctions are designed to accomplish. As consumers of precious public resources, public officials have an absolute obligation to advocate change that benefits the community.

Citizen advisory boards and active volunteer committees are excellent vehicles for involving interested community representatives. These citizens can become valuable program advocates with victims' groups and funding authorities. They have a unique impact and special credibility with legislators and council members that criminal justice system professionals do not.

#### ***Your Tools: What You Need to Make All of This Happen***

##### ***A Management Information System***

The implementation of this vision must be based on a foundation of solid information. At a minimum, an agency needs a management information system that will maintain good data on how cases

flow through the criminal justice system, who the offenders are in the system, where they are placed, and how long they stay there. Data collection, monitoring, and evaluation are critical components of an effective system and are the best means to determine if the agency or program is living up to expectations.

##### ***A Marketing Strategy***

Chapter 15, Taking It to the Public, provides a more detailed discussion of marketing. Your agency can initiate a number of efforts that will begin the process of regular communication with other system actors and the public. These efforts are consistent with developing a growing, interactive agency.

- Use a personal computer to create attention-getting briefing materials.
- Send key staff to training programs on media relations and public speaking.
- Establish an advisory board of interested citizens and individuals from other justice agencies. Allow them to get to know your agency and to think through with you new ways of doing business.
- Distribute press packets, meet with editorial boards, and invite reporters to view programs and talk to staff. This is one area where your investment in data will pay off: You will be able to provide a concrete, informed discussion about what the agency does, why, and for whom.
- Disseminate the mission statement in various forms: on cards, on office wall hangings, in the agency newsletter.

##### ***Friends in High Places***

Cultivate open and honest working relationships with a few interested legislators, county board members, and other civic leaders. To the extent that they understand the agency and its mission, they will be able to make recommendations or decisions that make sense for the agency. (They will also be more inclined to warn you of impending disaster and provide access to their decisionmaking processes.)

## **SENTENCING IN THE 90'S: THE NEED FOR ALTERNATIVES**

**The Maricopa County  
Public Defender's  
Office and County  
Attorney's Office are  
pleased to invite you  
to join us and our  
distinguished faculty  
at a seminar designed  
to examine Arizona's  
sentencing history,  
review the current  
sentencing  
alternatives and  
consider future  
sentencing options.**

**Friday  
Oct. 18, 1991  
Hyatt Regency  
Phoenix  
2nd Street and Adams**

### **CLE**

This program may qualify for up to 6.75 hours MCLE with the Arizona State Bar

#### **Agenda**

#### **Friday, October 18th, 1991**

- 8:00 - 8:30 Registration -- Coffee  
8:30 - 8:45 Opening Remarks: Carole Carpenter  
8:45 - 9:45 Presentation: The History, Philosophy and Objectives of Intermediate Sanctions and a discussion of the results from recent studies (i.e., Knapp Report, Rand Study and Public Opinion Polls)  
Speaker and Seminar Moderator: George Keiser  
9:45 - 10:30 Presentation: The Need For Alternatives - Has crime on the streets been reduced by mandatory sentencing? What is happening in America and why are we looking for alternatives to prison?  
Speaker: Ralph Salierno  
10:30 - 10:45 Break  
10:45 - 11:45 Panel Discussion: The ethical issues and responsibilities that result from the increased use of Intermediate Sanctions  
Moderator: Michael Grant  
Panelists:
  - Judiciary - The Honorable B. Michael Dann
  - Academia - Gary Lowenthal
  - Prosecution - Myrna Parker
  - Defense - Robert E. Guzik
  - Media - David Bodney  
11:45 - 1:00 Lunch (on your own)  
1:00 - 1:30 Presentation: Introduction to Intermediate Sanctions - What are Intermediate Sanctions? What are the perspectives of various county agencies on the issue?  
Speaker: Honorable Ronald S. Reinstein  
1:30 - 2:00 Presentation: The Philosophy of Supervision - How the probation department is reacting to the movement toward alternatives  
Speaker: Norm Heiber  
2:00 - 3:00 Presentation: Existing Alternatives - The Nuts and Bolts - A look at the components of some alternatives developed for Maricopa County (presented by Community Programs Staff of the Maricopa County Adult Probation Office)  
Community Punishment Program - Mark Hendershot  
F.A.R.E. Probation - Doug Pilcher  
Intensive Probation - Cynthia Kengott  
3:00 - 3:15 Break  
3:15 - 4:00 Presentation: Existing Alternatives (continued)  
Work Furlough - Cynthia Kengott  
Shock Incarceration - Cynthia Kengott  
Day Report Centers - Doug Pilcher  
4:00 - 4:30 Presentation: Progressive Punishment - Finding a key to meaningful sentencing.  
Speaker: Honorable Michael D. Ryan  
4:30 - 5:00 Presentation: The Criminal Justice System - What's In Store For the 90's - In which direction are we heading and what specific changes can we expect?  
Speaker: Governor Fife Symington, State of Arizona

#### **Exhibit 14-2**

#### **Maricopa County Adult Probation Department Mission Statement**

The mission of the Maricopa County Adult Probation Department is to provide information to the court and provide community based sanctions for adult offenders. This is accomplished by conducting investigations, enforcing court orders, and providing treatment opportunities.

*We believe* that probation is the most viable sanction available to the court.

*We believe* that individuals can change and that we can be instrumental in directing that change.

*We believe* that we can assist our clients to live a life of freedom through law-abiding behavior and compliance with conditions of probation.

*We believe* in the pursuit of excellence. We will achieve this by hiring the most qualified staff and by providing quality training and adequate resources to staff. We will recognize staff achievement and offer promotional opportunities for the most qualified individuals while ensuring high standards of performance and a productive work ethic.

*We believe* in affording all employees dignity and respect.

*We believe* in affording all offenders dignity and respect.

*We believe* in promoting and maintaining a positive, safe, and healthy work environment.

*We believe* in a participative style of management that includes the involvement of staff and the community.

*We believe* in being sensitive to the needs of victims of crime.

*We believe* that adherence to our mission will enhance the safety and protection of our community.

#### **An Intermediate Sanctions Project Coordinator**

Assign one staff person to coordinate the agency's involvement with the larger intermediate sanctions effort. This staff member needs to have the freedom and time to coordinate planning and program development with other agencies as a part of his or her job description. You will need to empower the Project Coordinator to represent the agency when dealing with other organizations and provide ongoing support of his or her efforts.

#### **An Involved Court**

No matter which arm of the criminal justice system your agency represents, it must have the support of judges, who have the authority to place offenders in the system. You may need to help the judges understand the importance of their involvement with the agency and clearly define how they can help. A probation agency engaged in program development may call on a judge or a representative group of judges to serve as advisors in the development of the program. This will offer an important perspective to the work and will educate the bench about this and other program options.

#### **Training and Information Sharing**

Your agency's mission and program objectives can be effectively communicated to staff through your training activities. Consider an in-house training program as a vehicle to communicate a clear and consistent direction. Help staff to understand how each piece—whether it be a new treatment strategy or a revised set of procedures—fits.

Training and education go beyond the agency's own staff. It is equally important to educate other system actors on the work that is being accomplished in your agency. One way to do this is to schedule a cycle of training sessions with judges, probation officers, prosecutors, defense attorneys, and court management staff. Use these training sessions as opportunities to disseminate program evaluations. Get feedback from all stakeholders and be responsive to that feedback as you revise existing programs and develop new ideas. Training efforts such as these will result in greater program integrity, improved outcomes for offenders, and increased confidence and cooperation. (The agenda from one such session is included as Exhibit 14-1 in this chapter.)

#### **A Final Word to Those Taking on This Work**

If you are overly timid, sensitive, or serious, do not try to manage this project. You may occasionally have to close your eyes and plow ahead on a program, making decisions as developments occur. You will certainly need some self-confidence to sustain your ego when you are criticized by the armchair quarterbacks, and you had better be able to smile a little when your senior staff patiently raise their eyes to the ceiling and sigh during one of your more visionary management presentations on intermediate sanctions theory. All of this is just an inevitable part of change.

**Exhibit 14-3**

**Vision and Values in Marion County Corrections**

*Billy Wasson*

Vision and values are much talked about today in corrections management as in organizations generally. A shared vision gives meaning to what we do by incorporating our deepest values into a statement of a preferred future. By providing a benchmark against which the present state can be evaluated, agreeing on values forces us to take responsibility for both our successes and our failures.

Most organizations have developed a statement of values in recent years in an effort to articulate their "culture," but in many cases these statements have been issued by top management and followed by an effort to "communicate" them downward in the organization. The Marion County Corrections Department (MCCD) drew from the ideas of Peter Block, who describes a process through which middle managers and staff use the parameters set by top management as input in creating their own visions for their units and for the organization.

Two years ago a task force representing various units of MCCD was formed to develop a vision statement that addressed staff, offenders, external stakeholders, and the department as a whole. The task force was directed to incorporate in the vision the principles of limited risk management and direct supervision jails, as well as the unification of field and institutional services, all directions in which the agency was already moving.

The process has been a long one, and in a sense will never be complete, but important elements of the organization's vision have crystallized into a consensual expression of shared values.... A preference for team management and the empowerment of staff as well as a commitment to community protection reflect [our] values .... Other elements are expressions of the personal values of MCCD management and staff: openness and responsiveness to progressive ideas and actions; maintenance of an environment of honesty and mutual respect; regard for the dignity of each individual; and pride in and responsibility for the quality of the work we do.

A vision statement, like a constitution, is a living document, and as such is always subject to challenge and change. But in communicating and affirming our core values, it forces attention on the important issues. Vision and values affect program design and resource allocation, offender targeting and the choice of sanctions, personnel selection and training, evaluations of effectiveness, organizational structure, and the level of public confidence in the department. Clearly stated and agreed-upon values provide the basis for consistency and predictability, enable the organization to serve multiple purposes, and aid in problem-solving and the setting of priorities.

---

Excerpted from "Values Drive Sanctions Development," by Billy Wasson, Director of the Marion County (Salem, Oregon) Department of Corrections. The complete article is contained in the *Community Corrections Quarterly*, Volume 1, Number 4, Summer 1990, available through the National Institute of Corrections Information Center (303-682-0213; toll-free 800-877-1461).

### Taking It to the Public

*Barbara Krauth\**

**Introduction** This chapter comes at the end of the handbook not because it is least important—quite the contrary—but because it represents the turning outward of the intermediate sanctions process. In the preceding chapters, we emphasized changing how criminal justice system actors and agencies relate to one another, conduct their common business, and approach their internal practices, programs, and policies. Here we want to point out that, in addition, you need to create an environment that supports all of this change.

Changes in system policy and practice can take place only in a climate of positive public opinion and in a criminal justice system that uses the jurisdiction's new sentencing structure appropriately. The policy group has assumed responsibility for making changes; now it must also produce a climate of public and system support that will make the changes successful. Throughout the intermediate sanctions process you will seek consensus and develop broad support within the criminal justice system for the more effective sanctioning of offenders. Educating the public and building links to your external constituency are necessary aspects of that process. They are not add-on activities to the process; they are integral to it. As the group plans its overall efforts, develops agendas, and makes task assignments, be sure that these marketing activities are included.

#### **Marketing Intermediate Sanctions**

The idea of marketing may seem both alien and offensive to many in the public sector because it smacks of slickness, manipulation, and image-building. Nevertheless, marketing is necessary because public agencies depend on public support. Policymakers must be willing not only to inform and educate, but to shape opinion.

In this sense, marketing is vital. To gain support for its enterprise, the policy group needs to identify its constituencies and convince them of the importance of its efforts. The marketing approach should not be manipulative or false. What is needed is not hype but consistent, clear, and credible messages about the purposes of the intermediate sanctions and their value for each constituency.

#### **Who Are the Likely Constituencies?**

Because crime and justice touch the lives of us all and deeply affect the quality of life in our communities, the potential constituency for the intermediate sanctions process is broad-based. It can be divided into two groups: those who make up "the public" and those who are part of the criminal justice process.

The emphasis here is primarily on the former group: the larger external community and its subgroups. Reaching those who are part of the criminal justice system is important—they are absolutely critical to success—but the leaders of those key internal constituencies have been involved from the beginning and should take responsibility for ensuring support in their agencies. As part of the larger process, these leaders should provide a plan outlining how final recommendations will be implemented in their agencies. In the experience of one jurisdiction, "It won't do much good for the presiding judge, the prosecutor, and the chief probation officer

to agree on a program if the attorney and line officers actually handling the cases don't believe it will work."

External constituencies are the groups, large and small, that determine the general climate in which the criminal justice system operates, and, in this case, tries to make change. Because of the political context in which that system functions, building support among external constituencies is critical to success. Because of the importance of these groups, you should give serious consideration to including their representatives on the policy team. Whether this is done or not, however, you will still need to reach out to these audiences in a deliberate and targeted manner.

\*Barbara Krauth is an independent researcher and writer who recently completed nine years as publications and research coordinator for the National Institute of Corrections Information Center. She has written more than 40 publications on all aspects of corrections, and, through her many years with the Information Center, is familiar with the issues involved in educating the public about the complex field of criminal justice.

- *The public.* The general public may be your most important audience for two reasons. First, public agencies depend on public support, and public attitudes play a major role in decisions about legislation and local funding allocations. Second, judges and others involved in the sentencing decision are keenly aware of public concern about crime and safety. With intense competition for public resources and growing fear about crime, criminal justice agencies cannot afford to maintain their traditionally invisible or reactive posture or to allow the media to be the major force in shaping local public opinion.
- *The state legislature and the governor.* Your policy group may propose changes in sentencing that require new laws to be written or entirely new sentencing structures to be specified. Such major policy changes cannot occur without the support of executive as well as legislative leaders. In some jurisdictions, state government finances virtually all corrections resources, and even local programmatic changes may require state approval.
- *The local executive and local legislative body.* Much of the financial support for community-based sanctioning options must come from the local city or county budget. Siting those options, whether a residential treatment facility or a drop-in center for female offenders with children, will require local political support. Many cities and counties are wrestling with problems with their jails, so corrections may already be a hot issue.
- *The media.* It is important to target the media in marketing efforts so that the policy group has a role in shaping the picture that is presented to other constituencies of intermediate sanctions and the offenders sentenced to them.

- *The business community.* The business community typically is alarmed by the impact of crime and escalating public spending on corrections. It can be a source of ideas and support, but it too must be educated about the costs and benefits of intermediate sanctions.
- *Key constituencies among the public.* It may also be important to educate specific citizen groups, such as court watch, offenders' families, or victims' groups. Once convinced of the value of intermediate sanctions, representatives of victims' groups, for example, can be particularly effective spokespersons.

### **Planning a Marketing Strategy**

In marketing, just as in sanctioning, it is important to begin by examining **why** you need to do this. For example, is the policy group trying to strengthen a basically positive or open-minded attitude toward community-based corrections, or is it attempting to overcome existing opposition or the effects of well-publicized "incidents?" Is the community indifferent to corrections issues, or is it highly politicized?

In identifying the goals for this marketing effort, be hardheaded about how much support you need to generate. That will depend, to a certain extent, on how much reshaping the policy group is proposing and/or what level of new resources it will require. Marketing is an important part of the work, but do not waste time by overdoing it or call unnecessary attention to your efforts.

To begin identifying the purposes and goals of marketing, draw on the experience of members of your policy group and their senior staff. Have there been comparable efforts of this type in the past? Were they successful? What role did opposition and support play in that outcome?

### **Developing a Marketing Strategy**

Return to the power analysis and environmental scan that the policy group completed early in the process. What major sources of support and opposition must be dealt with? What about key themes, ideas, and values to address or include?

A well-thought-out marketing strategy will answer the following questions:

1. Which individuals and groups must we reach?
2. Why are they important? Can we put them in any order of importance?
3. What do we assume about their orientation toward or opinion of our efforts?
4. Have we checked out our assumptions for accuracy?
5. If we think that we have their support (or acquiescence), do we need to do anything to ensure that it continues?
6. If we think that they are likely to oppose us, what will they object to?
7. What are the values, concerns, or issues that drive that opinion?
8. How and where do our efforts address their concerns or share their values?
9. How can we let them know that?
10. Who or what can influence these groups? Where do they get their information?
11. How can we reach those sources of information and influence?
12. How can we use our supporters (identified earlier or members of the policy group) to do this?
13. What are the key messages that we should communicate?

Taking the time to answer these questions carefully will ensure that your efforts are targeted to the right audiences, with the right messages and your best messengers.

## **Developing a Marketing Plan**

Your marketing plan will rest on two key elements: knowing what the policy group is selling and to whom. For this reason, although marketing should be included as early in the process as possible, it cannot really start until the policy group is far enough along to know what the product is. Strategy development, however, can and should begin early.

The plan should address the following considerations, each of which is important to any jurisdiction's marketing effort:

- *Base your marketing efforts on a clear understanding of your group's mission, values, and goals.* Know what you are selling! As part of the intermediate sanctions process, you will have completed a picture of your jurisdiction's criminal justice system, agreed on goals and values, and developed comprehensive information about offenders and sanctions. This means that the policy team should know what it has to sell.
- *Identify your customers, and their needs and concerns.* Determine who your customers are, and be sure you understand their concerns, issues, and values. Listen. Look for ways to learn more about the groups and individuals whom you identified as important constituents. On the basis of what you hear, know what it is the group needs to convey.

You cannot be everything to everyone. If the policy group's consensus is that the sanctioning goal is to be reparation, for example, you may not convince the segment of the public interested in punishment. However, it may be possible to make them also understand the value of reparation.

- *Consider the customers' current levels of understanding and approval.* Marketing efforts should be based on what customers now believe and what the policy group wants them to understand. Some groups may be fairly knowledgeable, while others may have many misperceptions. Be aware

of what perceptions need to change and what aspects of intermediate sanctions should be emphasized.

- *Select the best approach for each group.* The content of the communication, its style, and the type and timing of the message will vary, depending on when in the process it takes place and to whom it is directed. Structure the approach to identify clearly how the system meets the needs of different groups. Remember that ideas are accepted more readily if they are described simply and in ways that stress advantages consistent with the values of each group.

Consider the channels of decisionmaking for each group, the possible response expected, and how the policy group will overcome resistance.

## **Some Marketing Tools**

Marketing tools and techniques can be like correctional programs: It is hard to look at a list of them and not think, "Hey, we should have one of those!" Use all of the strategy questions and careful planning to evaluate the items listed below. Used carefully and purposefully, they can be invaluable; otherwise, they are a waste of valuable time and scarce resources.

Marketing approaches will vary depending on the jurisdiction. The general political climate, the existing attitudes of key stakeholders, and the time and resources available will determine appropriate strategies. Here are a few approaches that have been used successfully by other jurisdictions:

- Commission a public opinion survey, delphi survey, or a series of focus groups that explore opinions on intermediate sanctions in typical cases.
- If the results are interesting or noteworthy, call a news conference to announce the findings. Summarize the results in writing, including some notable quotes, if available.

- Prepare a press packet, including some of the items listed below (such as fact sheets, newsletters, etc.), for distribution at the press conference or at other events.
- Develop fact sheets summarizing research data or results of evaluations of your own or other jurisdictions' intermediate sanctions systems.
- Develop fact sheets on the costs of various correctional options; include data on the types of offenders likely to be found in those options.
- Identify the assumptions on which current policies are based; develop data that challenge these assumptions. Distribute the results to legislators, chief executives, the media, and those responsible for funding.

---

## **Fact Sheets Respond to Citizens' Concerns**

***The Michigan Office of Community Corrections has, among other public education initiatives, produced a series of fact sheets that address common concerns citizens have about community corrections. These fact sheets highlight the key messages needed to explain the importance of and need for community corrections in Michigan. The concepts that the Michigan Office of Community Corrections has chosen to highlight are:***

- ***Community corrections programs are cost effective.***
- ***Community corrections programs are not soft on the offender.***
- ***Community corrections programs can help to reduce the crime rate.***
- ***Community corrections programs are both safe and successful.***
- ***Citizens should be aware of and involved in the workings of their local criminal justice system.***
- ***Community corrections programs ease jail and prison crowding.***

*Source: "Educating the Public About Community Corrections," Michigan Office of Community Corrections and Community Corrections Advisory Boards*

- Develop a mailing list for the distribution of materials.
- Publish a newsletter highlighting project activities.
- Develop a speakers bureau to address local service clubs and church groups; inform those groups of your availability.
- Get involved in victims' groups.
- Invite media representatives to attend specific (or all) meetings of the policy group; offer to write op-ed pieces or stories.
- Have the policy group chair request a meeting with the editorial boards of local and statewide newspapers to provide them with background information on the group's efforts.
- Look for opportunities for human interest stories about intermediate sanctions programs (the graduation ceremonies for the literacy classes, the work done at the hospital by the community service program), and feed them to the reporters who have attended the policy group meetings.
- Throughout the process, use policy group members to sell policies to their constituents.

#### **The Role of Policy Team Members in Marketing**

A wealth of marketing support is represented on the team itself. Those who have agreed to serve on the policy team have demonstrated a commitment to a new way of conducting the business of the criminal justice system. Explaining that to the public is part of that commitment.

Many members of the policy group are public figures with high visibility and a lot of credibility. Make sparing, targeted, and high-profile use of those key individuals: a meeting with the editorial board of the newspaper, a well-timed press conference, or testimony before the state legislature, for example. If they are armed with good information and are comfortable with what they are selling, most policymakers will welcome opportunities for this kind of exposure.

Other members, their senior staff, and members of the policy group staff can also address church and civic groups, give interviews to reporters, and help develop the fact sheets described earlier.

*The timing of educational or marketing efforts is crucial.* Building support is important both in the process of designing intermediate sanctions policy and at the point of implementing new programs. Involve different groups at various points in the intermediate sanctions process. The approach will vary, depending on the audience and the stage of the process.

*Ties to the public should be developed early, in part by including a representative of the public on the policy group.*

The intermediate sanctions process offers a way to identify and interpret the community values that are the cornerstone of intermediate sanctions policy. Involving the public early in the process is important for two reasons:

1. Public involvement ensures that the resulting policy will reflect the community's values. One way to be sure that these values are incorporated into the sanctioning goals the group develops is to find an explicit means for identifying those values. Public opinion surveys, delphi surveys, and focus groups all offer systematic ways to determine community attitudes.

---

#### **Using Focus Groups to Determine the Community's Values**

*One method to identify the values of your community is to solicit active involvement from citizens. Focus groups, a qualitative method for measuring public attitudes, are a useful technique for understanding the public's views on complex policy issues.*

*The Alaska Sentencing Commission used a focus group process that might serve as a model to other policy groups. Working with a consultant, the Commission:*

- Identified potential participants. *The consultant used a "snowball sampling" technique to identify potential participants, who then referred the consultant to other potential participants. This referral process often occurred several times over before those who actually participated in the groups were located.*
- Assembled six groups of citizens from around the state. *Participants represented a cross section of the community in terms of age, sex, race, and employment type. Each group was composed of six to eight participants, an ideal size to encourage interaction among group members.*
- Provided background on Alaska corrections. *Participants were informed of the development of corrections in the state over the past ten years, the estimated annual costs of corrections per offender, and a wide range of intermediate sanctions options, some not yet available in Alaska.*
- Presented case scenarios. *Three hypothetical scenarios were presented. Participants were asked to imagine themselves in the roles of both judge and policymaker, fashioning sentences and discussing the purposes behind their sentence choices. Participants were asked to take into consideration the fiscal realities of their choices.*

*The study found that most participants supported intermediate sanctions for certain groups of felony offenders. Even where participants recommended incarceration for more violent or repeat offenders, they supported rehabilitation as a general goal. Overall, participants were more concerned with crime prevention and behavior change than they were with punishment.*

*These findings are consistent with other national surveys. Given specific information about the problem, costs, case specifics, and sentencing options, the public generally supports a range of carefully monitored intermediate sanctions designed for targeted groups of offenders.*

Star Tribune/Sunday/August 23/1992

# Looking for economies in justice

The Legislature wants district judges, county officials and other people involved in criminal justice to make more economical use of local resources, including jails. For nearly a year, Dakota County has pursued a planning process that could be a model for counties elsewhere.

The county may achieve better communication among criminal justice agencies, more efficient use of tax dollars and additional "intermediate" sanctions that fall between jail and probation. It adds up to potentially better government, a goal of reformers today.

An 18-person committee began monthly 7 a.m. meetings last fall to analyze criminal justice, identify problems and seek solutions. Its members come from the county board, administration, courts, corrections, police, sheriff's department, county attorney's office and public defender's office.

The committee quickly noted that good communication and coordinated policy were in short supply. Each agency typically went its own way. Decision making has been "disjointed incrementalism," says Community Corrections Director Mark Carey, committee chairman. He likens it to carpenters and plumbers building a house without an over-all contractor to coordinate the design and work.

Dakota County is growing fast. That means more people and more crime. Given tight budgets, the county can't afford not to make the most effective use of its resources.

County officials applied for and won



**Leonard Inskip**

a spot in a federal program to improve criminal justice, mainly through more nonjail sanctions. The program provides advice and seminars but no money. Ramsey County participated two or three years ago and Carver County started recently.

The committee seeks improved communication between agencies in the criminal justice system; planning and coordination to solve problems; alternative sanctions that serve public safety, reasonable offender punishment and possible rehabilitation; and, finally, better data that can help officials achieve policy goals.

A list of 27 issues for potential improvement emerged. For example, weekend sentences crowd the jail and raise county costs. Although the county is a leader in electronic monitoring, it lacks adult diversion and residential and day-treatment programs. Plea bargaining constricts the ability of probation officials to recommend appropriate sentences. The list goes on.

At its August meeting, the committee

heard a recommendation that a broadly representative and larger committee be created to develop local sentencing guidelines. The goal would be to increase sentencing consistency and to use resources more effectively. To meet concerns of judges, who favor judicial discretion, the guidelines must be flexible.

When discussion turned to a concept of diverting some offenders to an outside agency (like De Novo in Minneapolis), a prosecutor said diversion isn't needed. But the public defender said it works in Hennepin and Ramsey counties. Proponents say diversion can be more effective and less costly than probation.

Dakota County already has such intermediate sanctions as community work, sentencing to supervised service and monitored home confinement. Additional sanctions would further enable judges to link sentencing to what's right for the community, the offender and the criminal justice system.

The committee will hold an all-day retreat in September to seek consensus on a policy framework (public safety, resource use, fairness and similar issues) and then to move toward specific recommendations.

Mark Thompson, a committee member and an administrator for the First Judicial District (Dakota and six other counties), believes the planning process could be a model for regional resource planning ordered by the Legislature for all judicial districts. Thompson says that regional planning would be helped if at least one county in each judicial district followed Dakota County's example.

More economical use of resources is a necessary goal everywhere. Dakota County can be a leader — especially if its planning process leads to a permanent system for better communication and cooperation among everyone in local criminal justice.

2. Early involvement encourages citizens to “buy in” to the structure the group eventually develops. Obtaining public understanding and agreement early in the process makes it easier to summon public support for program funding or initiation at the implementation stage.

*It may also be useful to initiate early marketing efforts aimed at the state or local legislature.* The results of the intermediate sanctions process in your jurisdiction may be proposals that require the state legislature to change sentencing

laws or the local legislative body to adopt new funding policies. Efforts to reach these groups should begin early in the process and should take into account the possible need to get sponsors for new legislation and to identify and mobilize likely supporters among legislators and staff. Both conservative and liberal lawmakers are potentially strong supporters of intermediate sanctions, but the policy group must be sure they are educated and brought into the process before its end. The representative of the lawmaking

body who is on the policy team will, of course, be helpful in identifying other key legislators.

*The effort is likely to profit from early media involvement.* It is obviously useful to have both the print and electronic media on your side. Rather than trying to sell the new system or sanctions at the point of implementation, initiate specific marketing efforts at the beginning of the process. Inviting a representative to attend meetings or designing a presentation specifically to educate the media may pay off later in a positive climate of public opinion.

#### **How to Involve the Media**

*The media, especially your local newspaper, can be a powerful tool for educating the public about intermediate sanctions. However, it is important to protect the planning process itself by controlling when and how the media become involved with your work.*

*Having a media representative present at every meeting may discourage openness on the part of some team members: Everyone needs to be able to speak candidly, including elected officials, who might feel especially constrained by the presence of the media. Some of the jurisdictions participating in the Intermediate Sanctions Project initially considered inviting a media representative to attend all of their policy meetings, but, on further consideration, decided not to. Instead they used—and recommend—the following approaches:*

- Set up a meeting with the editorial board of the local newspaper.  
*Meetings between key representatives from the policy team and the local newspaper's editorial board have resulted in strong, supportive coverage of the policy team's efforts. In a two-stage process, for example, Sacramento County first announced the jurisdiction's participation in the project and defined the basic concept of intermediate sanctions. At a second meeting with the editorial board, the Sacramento Intermediate Sanctions Team provided a more detailed plan of the Team's work. The work with the editorial board resulted in two editorials endorsing the intermediate sanctions process approach: "...Sacramento is doing something imaginative, courageous, and right. All those responsible are to be commended."*

*This same approach with the local editorial board has been adopted by the Jefferson County (Kentucky) Crime Commission.*

- Invite the local newspaper to send a reporter to specific meetings.  
*After nearly a year of meetings and some significant progress with the intermediate sanctions effort, the Dakota County, Minnesota, team invited someone from the local editorial staff to attend one of its meetings. A second meeting with the reporter followed. After these two sessions, the writer praised the process in an editorial, calling the Dakota County work "a model for counties elsewhere." (The editorial is reprinted as Exhibit 15-1 in this chapter.)*

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



# NATIONAL INSTITUTE OF JUSTICE

## *Research in Action*

Charles B. DeWitt, Director

August 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 un-rehabilitated 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.<sup>1</sup> 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.

<sup>1</sup> 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).

Michael N. Castle is Governor of Delaware. This article is adapted from his address September 6 to the 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.

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**

Taking It To the Public

---

**I. Why Market Intermediate Sanctions?**

- A.** To produce a climate of public support:
  - for funding changes; and
  - for changes in sentencing practices.
- B.** Crime and justice issues affect the quality of life in all communities.

**II. Who Are the Likely Constituencies?**

- A.** The public;
- B.** The state legislature and the governor;
- C.** The local executive and local legislative body;
- D.** The media;
- E.** The business community; and
- F.** Key constituencies among the public (e.g., victim groups).

**III. In Planning a Marketing Strategy, Consider These Questions:**

- A.** Do we need to market intermediate sanctions in our jurisdiction?
- B.** How much support must we generate?

**Taking It to the Public**

---

***IV. Developing a Marketing Strategy Begins with These Questions:***

- A.** Whom must we reach?
- B.** Why are they important?
- C.** What do we assume about their orientation?
- D.** Are our assumptions accurate? Have we checked?
- E.** What can we do to encourage existing support?
- F.** What is the nature of opposition?
- G.** What are the values and concerns that drive that opposition?
- H.** How and where do our efforts coincide with their values?
- I.** How can we let them know of the agreement?
- J.** Who or what can influence these groups?
- K.** How can we reach those sources of influence?
- L.** How can our supporters help us do this?
- M.** What are the key messages we want to communicate?

***Talking to the Public***

---

***V. To Develop an Effective Marketing Plan:***

- A.** Ensure that the marketing plan is based on a clear understanding of your mission, values, and goals;
- B.** Identify “customers,” their needs, and concerns;
- C.** Consider the current level of understanding and approval of the customers; and
- D.** Select the best approach for each group.

***VI. Marketing Tools and Methods Might Include:***

- A.** Public opinion surveys or focus groups;
- B.** News conferences to announce findings;
- C.** Press packets;
- D.** Fact sheets on comparative costs, research data, or evaluation results;
- E.** A mailing list of individuals and groups to distribute materials to;
- F.** A newsletter;
- G.** A speaker’s bureau;
- H.** Involvement in victim groups;
- I.** Participation of media representatives in meetings of the policy group;
- J.** Meetings between the policy group and newspaper editorial boards;
- K.** Human interest stories; and
- L.** The deployment of policy group members as representatives to market the group’s work with their own agencies and constituencies.

## USER FEEDBACK FORM

Please complete this form to assist the National Institute of Corrections in assessing the value and utility of its publications. Detach from document and mail to:

Publications Feedback  
National Institute of Corrections  
320 First Street, NW  
Washington, D.C. 20534

1. What is your general reaction to this document?

Excellent       Good       Average       Poor       Useless

2. To what extent do you see the document as being useful in terms of:

Very Useful    Of Some Use    Not Useful

Providing new or important information  
Developing or implementing new programs  
Modifying existing programs  
Administering ongoing programs  
Providing appropriate liaisons

3. Do you feel that more should be done in this subject area? If so, please specify what types of assistance are needed.

4. In what ways could the document be improved?

5. How did this document come to your attention?

6. How are you planning to use the information contained in the document?

7. Please check one item that best describes your affiliation with corrections or criminal justice. If a governmental program, please also indicate level of government.

<input type="checkbox"/> Dept. of corrections or prison	<input type="checkbox"/> Police
<input type="checkbox"/> Jail	<input type="checkbox"/> Legislative body
<input type="checkbox"/> Probation	<input type="checkbox"/> Professional organization
<input type="checkbox"/> Parole	<input type="checkbox"/> College/university
<input type="checkbox"/> Community corrections	<input type="checkbox"/> Citizen group
<input type="checkbox"/> Court	<input type="checkbox"/> Other government agency
<input type="checkbox"/> Juvenile justice	<input type="checkbox"/> Other (please specify) _____

Federal       State       County       Local       Regional

8. OPTIONAL:

Name \_\_\_\_\_ Agency \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Telephone No. (\_\_\_\_\_) \_\_\_\_\_