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Intermediate Sanctions

ABSTRACT

Most American jurisdictions have recently established new intermediate sanctions programs. Few such programs have diverted large numbers of offenders from prison, saved public monies or prison beds, or reduced recidivism rates. These findings recur in evaluations of community service, intensive supervision, house arrest, day reporting centers, and boot camps. The principal problems have been high rates of revocation and subsequent incarceration (often 40–50 percent) and assignment of less serious offenders than program developers contemplated. If intermediate sanctions are to achieve their aims, means must be found to assure that they are used for the kinds of offenders for whom they are designed.

Three major developments in the 1960s and 1970s led to the perceived need in the 1980s and 1990s to develop intermediate sanctions that fall between prison and probation in their severity and intrusiveness. First, initially on the basis of doubts about the ethical justification of rehabilitative correctional programs (Allen 1964), and later on the basis of doubts about their effectiveness (Lipton, Martinson, and Wilks 1975; Brody 1976; Sechrest, White, and Brown 1979), rehabilitation lost credibility as a basis for sentencing. With it went the primary rationale for individualized sentences.

Second, initially in academic circles (e.g., Morris 1974; von Hirsch 1976) and later in the minds of many practitioners and policy makers, “just deserts” entered the penal lexicon, filled the void left by rehabilitation, and became seen as the primary rationale for sentencing. With
it came a logic of punishments scaled in their severity so as to be proportionate to the seriousness of crimes committed and a movement to narrow officials' discretion by eliminating parole release, eliminating or limiting time off for good behavior, and constraining judges' discretion by use of sentencing guidelines and mandatory penalties.

Third, beginning in the 1960s and continuing into the 1990s, crime control policy became a staple issue in election campaigns, and proponents of "law and order" persistently called for harsher penalties. With this came a widespread belief that most sentences to ordinary probation are insufficiently punitive and substantial political pressure for increases in the severity of punishments. Because, however, most states lack sanctions other than prison that are widely seen as meaningful, credible, and punitive, pressure for increased severity has been satisfied mostly by increases in the use of imprisonment.

These developments resulted in a quadrupling in the number of state and federal prisoners between 1975 (240,593) and 1993 (948,881) and in substantial overcrowding of American prisons. At year end 1993, the federal prisons were operating at 136 percent of rated capacity, and thirty-nine state systems were operating above rated capacity. An additional 51,000 state prisoners in twenty-two jurisdictions were being held in county jails because prison space was unavailable (Bureau of Justice Statistics 1994).

Whatever the political and policy goals that vastly increased numbers of prisoners may have satisfied, they have also posed substantial problems for state officials. Prisons cost a great deal to build and to operate, and these costs have not been lightly borne by hard-pressed state budgets in the recessionary years of the early 1990s. In 1994, corrections budgets were the fastest rising component of state spending (National Conference of State Legislatures 1993). However, failure to deal with overcrowding attracts the attention of the federal courts, and throughout the 1990s as many as forty states have been subject to federal court orders related to overcrowding.

Intermediate sanctions have been seen as a way both to reduce the need for prison beds and to provide a continuum of sanctions that satisfies the just deserts concern for proportionality in punishment. During the mid-1980s, intermediate sanctions such as intensive supervision, house arrest, and electronic monitoring were oversold as being able simultaneously to divert offenders from incarceration, reduce recidivism rates, and save money while providing credible punishments
that could be scaled in intensity to be proportionate to the severity of the offender's crime. Like most propositions that seem too good to be true, this one was not true.

During the past decade's experimentation, we have learned that some well-run programs can achieve some of their goals, that some conventional goals are incompatible, and that the availability of new sanctions presents almost irresistible temptations to judges and corrections officials to use them for offenders other than those for whom the program was created.

The goals of diverting offenders from prison and providing tough, rigorously enforced sanctions in the community have proven largely incompatible. A major problem, and it has repeatedly been shown to characterize intensive supervision programs, is that close surveillance of offenders reveals higher levels of technical violations than are discovered in less intensive sanctions. Revocations for conduct constituting new crimes are seldom higher for offenders in evaluated programs than for comparable offenders in other programs. Nor is there reason to suppose that offenders in evaluated new programs commit technical violations at higher rates. But if they do breach a curfew or stop performing community service or get drunk or violate a no-drug-use condition, the closer monitoring to which they are subject makes the chances of discovery high; once the discovery is made, many program operators believe they must take punitive action—typically revocation and resentencing to prison—to maintain the program's credibility in the eyes of judges, the media, and the community.

A second major lesson is that elected officials and practitioners often prefer to use intermediate sanctions for types of offenders other than those for whom programs were designed. Many evaluations of intensive supervision programs and boot camps, for example, have shown that any realistic prospects of saving money or prison beds require that they be used mostly for offenders who otherwise would have served prison terms. Yet many elected officials and practitioners resist.

Elected officials resist because they are risk averse. Even in the best-run programs, offenders sometimes commit serious new crimes, and officials are understandably concerned that they will be held responsible for supporting the program. The Massachusetts furlough program for prisoners serving life sentences from which Willy Horton absconded, for example, had been in operation for fifteen years and was started under a Republican governor in 1971, but Democratic governor
Michael Dukakis was held politically accountable for Horton's 1986 rape of a Maryland woman. As a result of this and similar incidents, elected officials often support new intermediate sanctions but then take pains to limit eligibility to low-risk offenders. One illustration is the series of recent federal proposals for boot camps for nonviolent first-time youthful offenders. For reasons explained in the discussion of boot camps in Section II below, young nonviolent first-offenders are among the least appropriate imaginable participants in boot camps if the aims include cost savings and reduced savings on prison beds.

Practitioners, particularly prosecutors and judges, also often resist using intermediate sanctions for the offenders for whom they were designed. Partly this is because they too are reluctant to be seen as responsible for crimes committed by participants. This is why, as the discussion of intensive supervision in Section II documents, judges are often unwilling to cooperate in projects in which—as part of experimental evaluations—target categories of offenders are to be randomly assigned to a community penalty or incarceration.

Partly judges' "misuse" of intermediate sanctions occurs because they believe new community penalties are more appropriate for some offenders than either prison or probation. Forced by limited program options to choose between prison and probation, they will often choose probation because prison is seen as too severe or too disruptive of the offender's and his family's lives, albeit with misgivings because they believe ordinary probation too slight a sanction. Once house arrest or intensive supervision become available, those penalties may appear more appropriate than either probation or prison.

This not uncommon pattern of use of intermediate sanctions by judges for offenders other than those program planners had in mind is often pejoratively characterized as "net widening." That epithet oversimplifies the problem. From the perspectives of the desirability of proportionality in punishment and of availability of a continuum of sanctions, the judge's preference to divert offenders from probation to something more intrusive is understandable, perhaps admirable. From the perspective of the designers of a program intended to save money and prison space by diverting offenders from prison, however, the judge's actions defy the program's rationale and obstruct achievement of its goals.

Probably the most important lesson learned from fifteen years' experience with intermediate sanctions is that they are seldom likely to
achieve their goals unless means can be found to set and enforce policies governing their use. Otherwise, the combination of officials’ risk aversion and practitioners’ preferences to be guided solely by their judgments about appropriate penalties in individual cases are likely to undermine program goals.

Means must be found to establish policies governing the choice of sanction in individual cases. Two complementary means are available. First, discretion to select sanctions can be shifted from judges and prosecutors to corrections officials. “Back-end” programs to which offenders are diverted from prison by corrections officials, or released early, have been much more successful at saving money and prison space than have “front-end” programs. Similarly, parole guidelines have been much more successful and less controversial in reducing parole-release disparities than have sentencing guidelines in reducing sentencing disparities (Arthur D. Little, Inc. 1981; Blumstein et al. 1983, chap. 3). Presumably, these findings occur because decision processes in bureaucracies can be placed in fewer peoples’ hands and can be regularized more readily by use of management controls than can decisions of autonomous, politically selected judges.

Second, sentencing guidelines, which in many jurisdictions have succeeded in reducing disparities in who goes to prison and for how long (Tonry 1993), can be extended to govern choices among intermediate sanctions and between them and prison and probation. Some states have made tentative steps in this direction and many are considering doing so. Section III below summarizes some of this experience and suggests how current initiatives can be advanced.

First, though, to provide a necessary backdrop, Section I gives a brief overview of problems that make reductions in recidivism, costs, and prison use difficult to achieve. Section II summarizes experience to date with the implementation and evaluation of various intermediate sanctions, including boot camps, intensive supervision, house arrest and electronic monitoring, day reporting centers, community service, and day fines. Each of these sections provides an overview of program characteristics and discusses evidence concerning various measures of effectiveness, including implementation, net widening, and success at reducing recidivism, saving money, and diminishing demand for prison beds. The emphasis is mostly on American experience and research, but research elsewhere, especially in England and Wales, is touched on as appropriate.
I. General Impediments to Effective Intermediate Sanctions

In retrospect, it was naive (albeit from good intention) for promoters of new intermediate sanctions to assure skeptics that recidivism rates would fall, costs be reduced, and pressure on prison beds diminish if new programs were established. The considerable pressures for net widening and the formidable management problems involved in implementing new programs interact in complex ways to frustrate new programs. Although these challenges are now well understood, that knowledge has been hard won.

A. Recidivism

Consider first recidivism rates. From well-known evaluations of community service (McDonald 1986), intensive supervision (Petersilia and Turner 1993), and boot camps (McKenzie and Souryal 1994), to mention only a few, comes a robust finding that recidivism rates (for new crimes) of offenders sentenced to well-managed intermediate sanctions do not differ significantly from those of comparable offenders receiving other sentences. Recidivism and revocation rates for violation of other conditions, by contrast, are generally higher.

From different perspectives, both findings may be seen as good or bad. The finding of no effect on rates of new crime may be seen by many as good if the offenders involved have been diverted from prison and the new crimes they commit are not very serious. Sentences to prison are much more expensive to administer than sentences to house arrest, intensive supervision, or day reporting centers, and if the latter are no less effective at reducing subsequent criminality, they can potentially provide nearly comparable public safety at greatly reduced cost.

But they do not provide "comparable public safety": by definition, crimes committed in the community by people who would have been in prison would not otherwise have occurred. Thus, if diverted intermediate sanction participants commonly commit violent or sexual crimes, "no difference in recidivism rates" provides little solace. If, however, participants seldom commit violent or sexual crimes, the open-eyed choice that must be made is between avoidable minor crimes and substantial costs to hold people in prison. The suggestion that every offender be confined until he will no longer offend is impracticable. Property offenders particularly have high reoffending rates, more than 30 percent of American and English males are arrested for non-trivial crimes by age thirty, and all offenders cannot be confined for-
ever. In effect, this trade between costs and allowing avoidable crimes to happen is made whenever community sentencing programs are established.

From the other side of the punishment continuum, the finding of no effect on new crimes raises different issues. If ordinary probation is no less effective at preventing new crimes than is a new intermediate sanction at three times the cost, the case for sentencing offenders to the new program instead of probation cannot be made on cost-effectiveness terms. That does not mean that no case can be made; Petersilia and Turner (1993), among others, have offered the just-desert argument for intermediate sanctions that they can deliver a punishment that is more intrusive and burdensome than probation and appropriately proportioned to the offender's guilt. This is a plausible argument, but it shifts the rationale from utilitarian claims about crime and cost reductions to normative claims about the quality of justice.

The equally robust finding that participants in intermediate sanctions typically have higher rates of violation of technical conditions than comparable offenders otherwise punished provokes a not-quite-parallel set of concerns. Most observers agree that the raised violation (and related raised revocation) rates result from the greater likelihood that violations will be discovered in intensive programs, and not from greater underlying rates of violation. From a "the law must keep its promises" perspective, the higher failure rates are good. Offenders should comply with conditions, and consequences should attach when they do not.

The contrary view is that the higher failure rates expose the unreality and injustice of conditions—like prohibitions of drinking or drug use or expectations that offenders will conform to middle-class behavioral standards they have never observed before—that many offenders will foreseeably breach and that do not involve criminality. Many offenders have great difficulty in achieving conventional, law-abiding patterns of living, and many will stumble along the way; a traditional social work approach to community corrections would expect and accept the stumbles (so long as they do not involve significant new crimes) and hope that through them, with help, the offender will learn to be law-abiding. From this perspective, it is an advantage of low-intensity programs that they uncover few violations and a disadvantage of high-intensity programs that they do.

Thus the evaluation findings on recidivism and revocation rates elicit different reactions from different people and in light of different con-
ceptions of how the corrections system ought to work. In addition, however, they illuminate a major impediment to aspirations to reduce prison use by means of establishment of intermediate sanctions.

B. Prison Beds

If all offenders in a community program were diverted from prison, a 30 percent revocation rate for technical violations (whatever the rate for new-crime violations, but here assuming 20 percent) would not be an insurmountable problem. The net savings in prison beds would be the number of persons diverted multiplied by the average time they would otherwise spend in prison less the number of persons revoked for violations multiplied by their average term to be served. Unless the gross revocation rate approached 100 percent or the average time to be served after revocation exceeded the average time that would have been served if not diverted, bed savings are inevitable.

The combination of net widening and elevated rates of technical violations and revocations makes the calculation harder and makes prison bed savings difficult to achieve. For front-end programs, a 50 percent rate of prison diversion is commonly counted a success. Consider how the numbers work out. The 50 percent diverted from prison saves prison beds, on the calculation and assumptions described in the preceding paragraph. The 50 percent diverted from probation are a different story. They would not otherwise have occupied prison beds, and if half (on the 30 percent technical, 20 percent new crime revocation assumptions) suffer revocation and imprisonment, they represent new demand for beds, and a higher demand than would otherwise exist because many more of their technical violations will be discovered and acted on.

Whether a particular program characterized by 50 percent prison diversion will save or consume net prison beds depends on why offenders' participation is revoked, in what percentage of cases, whether they are sent to prison, and for how long. But 50 percent is a high assumed-diversion rate. If the true rate is 30 percent or 20 percent, net prison bed savings are unlikely.

C. Cost Savings

The third often-claimed goal of intermediate sanctions is to save money. Interaction of all the preceding difficulties make dollar savings unlikely except in the best of cases. If a majority of program participants are diverted from probation rather than from prison, and if tech-
nical violation and revocation rates are higher in the intermediate sanction than in the ordinary probation and parole programs to which offenders would otherwise be assigned, the chances of net cost savings are slight. For boot camps, for example, assuming typical levels of participant noncompletion and typical levels of postprogram revocation, Parent has calculated that “the probability of imprisonment has to be around 80 percent just to reach a break-even point—that is, to have a net impact of zero on prison bed-space” (1994, p. 9).

Cost analyses must, however, look beyond diversion rates, revocation rates, and prison beds. At least three other considerations are important. First is the issue of transactions costs. Net-widening programs that shift probationers to intensive supervision and then shift some of those to prison cost the state more because they use up additional prison space. But in addition they create new expenses for probation offices, prosecutors, courts, and corrections agencies in administering each of those transfers. Correctional cost-benefit analyses often ignore cost ramifications for other agencies, but the other agencies must either pay additional costs or refuse to cooperate. An example: community corrections officials often complain that courts sometimes do not take violations seriously and that, when they do, police assign such low priority to execution of arrest warrants for program violators that they are in effect meaningless (e.g., McDonald 1986).

Second is the problem of marginal costs. Especially in the 1980s, promoters of new programs commonly contrasted the average annual costs per offender of administering a new program (say, $4,500) with the average annual cost of housing one prisoner (say, $18,500) and claimed substantial potential cost savings. This ignores the complexities presented by net widening and raised revocation rates, but it also ignores a more important problem of scale.

For an innovative small program of fifty to one hundred offenders (and many were and are of this size or smaller), the valid comparison is with the marginal, not the average, costs of housing diverted offenders. Unless a prison or a housing unit will be closed or not opened because the system has fifty fewer inmates, the only savings will be incremental costs for food, laundry, supplies, and other routine items. The major costs of payroll, administration, debt service, and maintenance will be little affected. In a prison system with 5,000, 15,000, or 50,000 inmates, the costs saved by diverting a few hundred are scarcely noticeable.

Third is the issue of savings to the larger community associated with
crimes avoided by incapacitating offenders. If believable values could be attached to crimes that would be averted by imprisonment but that would occur if offenders were assigned to community penalties, they would provide important data for considering policy options. Unfortunately, this is a subject that has as yet received little sustained attention. Some conservative writers (e.g., Zedlewski 1987; DiJulio 1990; Barr 1992) have claimed that increased use of imprisonment is highly cost-effective. Kleiman and Cavanagh (1990), for example, claimed “benefits of incarcerating that one inmate for a year at between $172,000 and $2,364,000” (emphasis in original).

Liberal scholars have responded by showing the implausibility of many of the assumptions made in such calculations. Zimring and Hawkins (1991, p. 429), for example, showed that, on the assumptions made in Zedlewski’s analysis about the number of crimes prevented for each inmate confined, the 237,000 increase in the prison population that occurred between 1977 and 1986 should “have reduced crime to zero on incapacitation effects alone . . . on this account, crime disappeared some years ago.”

One of the conservative contributors to this debate later recanted more extreme claims and concluded that “the truth, we find, lies . . . arguably closer to the liberal than to the conservative view” (DiJulio and Piehl 1991). These debates have, however, been more ideological than scientific and offer little guidance for thinking about intermediate sanctions. What is left is the need mentioned earlier to weigh the kinds of risks particular offenders present with the costs that will be incurred if alternate sanctioning choices are made.

No one who has worked with the criminal justice system should be surprised by the observation that the system is complex and that economic and policy ramifications ripple through it when changes are made in any one of its parts. Sometimes that truism has been overlooked to the detriment of programs on behalf of which oversimplified claims were made. Georgia, for example, operated a pioneering front-end intensive supervision program (ISP) that was at one time claimed to have achieved remarkably low recidivism rates (for new crimes) and to have saved Georgia the cost of building two prisons (Erwin 1987; Erwin and Bennett 1987). It was later realized that many or most of those sentenced to ISP were low-risk offenders convicted of minor crimes who otherwise would have received probation. From serving initially as an exemplar of successful ISP programs that save money and reduce recidivism rates, Georgia’s ISP program now serves as
an exemplar of netwidening programs that increase system costs and produce higher rates of revocation for violations of technical conditions (Clear and Byrne 1992, p. 321).

II. Experience with Intermediate Sanctions
Writing about experience with intermediate sanctions bears some resemblance to shooting at a moving target. Although it typically takes at least three years from the time an evaluation is conceived until results are published, the programs themselves keep changing. Thus MacKenzie (1994), describing the results of an assessment of boot camps in eight states, took pains to explain that some of them changed significantly during and after the assessment. For example, the South Carolina program, initially a front-end program with admission controlled by the judge (and thus highly vulnerable to net widening) was reorganized as a back-end program in which participants were selected by the department of corrections from among offenders sentenced to prison. Similarly, programs in some states that had focused primarily on discipline and physical labor were reorganized to include a much larger component of drug treatment and educational opportunities.

Still, an evaluation literature has continued to accumulate, and lessons learned in some states a few years ago can be useful to policy makers in other states that are designing new programs or redesigning old ones. In order, the following subsections discuss research on boot camps, ISP, house arrest and electronic monitoring, day reporting centers, community service, and day fines.

A prefatory note is required. The evaluation literature for the most part raises doubts about the effectiveness of intermediate sanctions at achieving the goals their promoters have commonly set. This does not mean that there are no effective programs. Only a handful have been carefully evaluated. Many of those have in the aftermath been altered. Many sophisticated and experienced practitioners believe that their programs are effective, and some no doubt are. The evaluation literature does not "prove" that programs cannot succeed; instead, it shows that many have not and that managers can learn from these past experiences. Sometimes that learning may be expressed as program adaptations intended to make achievement of existing goals more likely. Sometimes, it may lead to a reconceptualization of goals.

The evaluation literature concerning intermediate sanctions is slight, which at first impression may seem surprising given that new programs have proliferated in every state. To anyone knowledgeable about cor-
rectional research, the relatively small amount of research will be less surprising: private foundations are conspicuously uninterested in criminal justice research, neither of the relevant specialized national funding agencies—the National Institute of Corrections and the State Justice Institute—spends much on research, and the National Institute of Justice must spread its limited research funds among a wide range of subjects.

The available literature consists of a handful of fairly sophisticated evaluations funded by the National Institute of Justice; a larger number of smaller, typically less sophisticated studies of local projects; and a large number of uncritical descriptions of innovative programs. There have been a number of efforts to synthesize the evaluation literature on intermediate sanctions, sometimes in edited collections (McCarthy 1987; Byrne, Lurigio, and Petersilia 1992; Tonry and Hamilton 1995), sometimes in unified books (Tonry and Will 1988; Morris and Tonry 1990). Given the time consumed in writing and publishing books, the collections and syntheses are current as of a year or two before their publication dates.

In order to keep this essay to a manageable length, the discussion of each intermediate sanction is held to a few pages and emphasizes the more substantial evaluations and literature reviews. In some cases—for example, concerning ISP (Petersilia and Turner 1993) and boot camps (MacKenzie 1994; MacKenzie and Piquero 1994)—relatively recent and detailed literature reviews are available for readers who want more information. In other cases—for example, concerning fines (Hillsman 1990) and community service (Pease 1985)—the best literature reviews are more dated: there has been relatively little American research on those subjects in recent years, but those articles, despite their dates, cover most of the important research. In still other cases, notably including day reporting centers, most of the available literature is descriptive, and no literature reviews are available.

A. Boot Camps

The emerging consensus from assessments of boot camps (also sometimes called “shock incarceration”) must be discouraging to their founders and supporters. Although promoted as a means to reduce recidivism rates, corrections costs, and prison crowding, most boot camps have no discernible effect on subsequent offending and increase costs and crowding (Parent 1994; MacKenzie 1994). The reasons are those sketched in Section I above. Most have been front-end programs that
have drawn many of their participants from among offenders who otherwise would not have been sent to prison. In many programs, a third to half of participants fail to complete the program and are sent to prison as a result. In most programs, close surveillance of offenders after completion and release produces rates of violations of technical conditions and of revocations that are higher than for comparable offenders in less intensive programs.

The news is not all bad. Back-end programs to which imprisoned offenders are transferred by corrections officials for service of a 90- or 180-day boot camp sentence in lieu of a longer conventional sentence do apparently save money and prison space, although they too often experience high failure rates and higher than normal technical violation and revocation rates.

Boot camp prisons have spread rapidly since the first two were established in Georgia and Oklahoma in 1983. By April 1993, according to a National Institute of Justice report (MacKenzie 1993), thirty states and the U.S. Bureau of Prisons were operating boot camps. According to the results of a survey of local jurisdictions in May 1992, ten jail boot camps were then in operation, and thirteen other jurisdictions were planning to open jail boot camps in 1992 or 1993 (Austin, Jones, and Bolyard 1993). The earliest were opened in 1986 in New Orleans and in 1988 in Travis County, Texas.

Boot camps vary widely in their details (MacKenzie and Parent 1992; MacKenzie and Piquero 1994). Some last 90 days, some 180. Admission in some states is controlled by judges, in others by corrections officials. Some primarily emphasize discipline and self-control; others incorporate extensive drug and other rehabilitation elements. Some eject a third to half of participants, others less than 10 percent. Most admit only males, usually under age twenty-five, and often subject to crime of conviction and criminal history limits, though there are exceptions to each of these generalizations.

The reasons for boot camps' popularity are self-evident. Many Americans have experienced life in military boot camps and remember the experience as not necessarily pleasant but as an effective way to learn self-discipline and to learn to work as part of a team. Images of offenders participating in military drill and hard physical labor make boot camps look demanding and unpleasant, characteristics that crime-conscious officials and voters find satisfying. A series of studies by the Public Agenda Foundation in Delaware, Alabama, and Pennsylvania of citizen support for intermediate sanctions, for example, found that
the public is more supportive of intermediate sanctions than is widely known but also found that they want such penalties to be burdensome and for that reason were especially in favor of boot camps (Doble and Klein 1989; Doble, Immerwahr, and Robinson 1991; Public Agenda Foundation 1993).

Most of what we know about the effects of boot camps on participants comes from a series of studies by MacKenzie and colleagues at the University of Maryland (e.g., MacKenzie and Shaw 1990, MacKenzie 1993, 1994; MacKenzie and Souryal 1994), from a U.S. General Accounting Office survey of research and experience (1993), and from an early descriptive overview of boot camps commissioned by the National Institute of Justice (Parent 1989).

The conclusions with which this subsection began are drawn from MacKenzie's work and later analyses by Parent. In addition to findings on completion rates, recidivism rates, and cost and prison bed savings, MacKenzie and her colleagues looked closely in Louisiana at effects on prisoners' self-esteem (MacKenzie and Shaw 1990). One early hypothesis concerning boot camps was that successful completion would increase participants' self-esteem, which would in turn lead to more effective participation in the free community and reduced recidivism. The first half of the hypothesis was found to be correct; using psychometric measures, MacKenzie and Shaw found that successful participants' self-esteem was enhanced compared with comparable prisoners in conventional prisons. Unfortunately, later assessments of successful participants after release found that their enhanced self-esteem soon disappeared (a plausible explanation for why the second half of the hypothesis concerning recidivism was not confirmed).

One tentative finding concerning possible positive effects of rehabilitative programs on recidivism merits emphasis. Although MacKenzie and her colleagues concluded overall that boot camps do not by themselves result in reduced recidivism rates, they found evidence in Illinois, New York, and Louisiana of "lower rates of recidivism on some measures" that they associated with strong rehabilitative emphases in those states' boot camps (MacKenzie 1994, p. 16). An earlier article describes a "somewhat more positive" finding that graduates under intensive supervision after release "appear to be involved in more positive social activities (e.g., work, attending drug treatment) than similar offenders on parole or probation" (MacKenzie and Souryal 1993, p. 465).

Boot camps illustrate most vividly of all intermediate sanctions the
ways in which net widening, rigorous enforcement of conditions, and high revocation rates can produce the unintended side effect of increased costs and prison use from programs intended to reduce both. Both MacKenzie (MacKenzie and Piquero 1994) and Parent (1994) have used models developed by Parent for predicting the prison use implications of boot camps in light of various assumptions about net widening; within-program failure rates; and postprogram revocation rates, including estimates of time to failure, time to revocation, and length of time in the boot camp, length of time in prison if not sent to the boot camp, and length of time in prison following failure or revocation.

Figure 1, taken from Parent's work (1994), shows the effects on prison beds of a hypothetical 90-day 200-bed facility on different assumptions of prison diversion and postprogram revocation and reincarceration. Other assumptions of failure rates within the program and
3. New York Estimates

![Graph showing bed loss and savings in thousands vs. probability of imprisonment.](image)

**Fig. 2.**—Effects on prison bed needs of prison diversion rates, New York. Source.—MacKenzie and Piquero (1994).

Lengths of confinement in lieu of boot camp and after revocation, based on averages documented in MacKenzie's eight-state assessment, are built into the model. The diagonal lines show the effects of different postprogram reincarceration rates on prison bed demand. At the lower 15 percent rate, boot camps create a net demand for additional prison beds if less than half those in the program would otherwise have gone to prison. At the more realistic 40 percent rate, at least 80 percent of participants must have been diverted from prison before prison beds are saved.

MacKenzie (1994) developed similar estimates for states in her eight-state assessment. Figure 2 shows estimates based on data from New York's boot camps of bed savings given various assumptions about prison diversion. Savings occur only if at least 75 percent of partici-
pants are diverted from prison and, sizable savings occur only if nearly all are diverted.

If a primary goal of boot camps is to reduce prison use, the policy implications of research on boot camps are straightforward. Parent (1994, p. 10) sees at least three: "First, boot camps should recruit offenders who have a very high probability of imprisonment." This means that participants should be selected by corrections officials from among prisoners rather than by judges from among sentenced offenders. Second, boot camps should minimize failure rates by reducing in-program failures and post-release failures. This means that misconduct within the boot camp should be punished within the boot camp whenever possible rather than by transfer to a regular prison and that misconduct after release should be dealt with within the supervision program whenever possible rather than by revocation and reincarceration. Third, participants in boot camps should be selected from among prisoners who otherwise would serve a substantial term of imprisonment. Transfer of prisoners serving nine-month terms to a 180-day boot camp is unlikely to reduce costs and system crowding. Transfer of prisoners serving two- or three-year mandatory minimum terms is likely to reduce both.

Corrections officials are aware of these findings. Some states—for example, New York—already operate boot camps that draw their clientele from state prisons and that result in much shorter terms of confinement for those who complete the program (including many who thereby avoid mandatory minimums). Other states, like South Carolina, have shifted from judicial to correctional selection of participants. One implication is clear, however: "Boot camps for nonviolent first offenders," though often proposed, are unlikely to accomplish any of the aims for boot camps that are generally offered.

B. Intensive Supervision

Intensive supervision for probationers and parolees was initially the most popular intermediate sanction, has the longest history, and has been the most extensively and ambitiously evaluated. Intensive supervision has been the subject of the only multisite experimental evaluation involving random allocation of eligible offenders to ISP and to whatever the otherwise appropriate sentence would have been (Petersilia and Turner 1993).

Evaluation findings parallel those for boot camps. Front-end pro-
grams in which judges control placement tend to draw more heavily from offenders who would otherwise receive less restrictive sentences than from offenders who would otherwise have gone to prison or jail. The multisite ISP evaluation by the RAND Corporation, in which jurisdictions agreed in advance to cooperate with a random assignment system for allocating offenders to sanctions, was unable to evaluate front-end ISP programs when judges refused to accept the outcomes of the randomization system (Petersilia and Turner 1993). Back-end programs draw from prison populations, but even for some of these programs, suggestions have been made that their creation may lead judges to sentence more minor offenders to "a taste of prison" in the belief that they will quickly be released into ISP (Clear 1987).

Like the boot camp evaluations, the ISP evaluations have concluded that offenders sentenced to ISP do not have lower recidivism rates for new crimes than do comparable offenders receiving different sentences but, instead, typically (because of closer surveillance) experience higher rates of violation of technical conditions and higher rates of revocation. Also as with boot camps, early proponents argued that ISP, while reducing recidivism rates and rehabilitating offenders, would save money and prison resources (Petersilia, Lurigio, and Byrne 1992, pp. ix–x); evaluations suggest that the combination of net widening, high revocation rates, and related case processing costs makes the cost savings claims improbable for most programs.

There is one tantalizing positive finding from the ISP evaluation literature that parallels a boot camp finding (MacKenzie and Souryal 1993): ISP did succeed in some sites in increasing participants' involvement in counseling and other treatment programs (Petersilia and Turner 1993). The drug treatment literature demonstrates that participation, whether voluntary or coerced, can reduce both drug use and crime by drug-using offenders (Anglin and Hser 1990; President's Commission on Model State Drug Laws 1993). Because Drug Use Forecasting data (e.g., National Institute of Justice 1994) indicate that half to three-fourths of arrested felons in many cities test positive for drug abuse, ISP may hold promise as a device for getting addicted offenders into treatment and keeping them there (Gendreau, Cullen, and Bonta 1994).

Few corrections programs are new in the sense that they have not been tried before: house arrest, supervision of variable intensity, treatment conditions, community service, restitution, intermittent or partial confinement—they have all long been used on a case-by-case basis
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as conditions of probation. Modern ISP, however, is different in that it follows a previous generation of similar programs that was the subject of widespread programmatic adoption and evaluation.

From the 1950s through the early 1970s, probation departments experimented with caseload size in order to learn whether smaller caseloads permitting more contact between officers and probationers would enable officers to provide more and better services and thereby enhance probation's rehabilitative effectiveness. The best-known project, in California, featured caseloads ranging from “intensive” (20 offenders) to “ideal” (50), “normal” (70–130), and “minimum” (several hundred). Lower caseloads produced more technical violations but indistinguishable crime rates (Carter, Robinson, and Wilkins 1967).

A later survey of the experience of forty-six separate (mostly Law Enforcement Assistance Administration–funded) programs found that intensive supervision programs had no effect on recidivism rates or increased them, and diverted few offenders from prison but recruited instead mostly from people who otherwise would have received probation (Banks et al. 1977). Not surprisingly, ISP based on rehabilitative rationales withered away.

Contemporary programs, with caseloads ranging from two officers to twenty-five probationers to one officer to forty probationers, are typically based on surveillance, cost, and punishment rationales. More frequent contacts between officer and offender (in some programs, as many as twenty or thirty per month) lead to closer surveillance, which in turn enhances public safety by making it likelier that misconduct will be discovered and punished. Because of closer surveillance, low-to mid-risk offenders can be diverted from prison to less costly ISP without jeopardizing public safety. Because of the frequency of contacts, subjection to unannounced urinalysis tests for drugs, and rigorous enforcement of restitution, community service, and other conditions, ISP will be much more punitive than conventional probation.

Contemporary ISP programs are of three types, each with an exemplar that was the subject of a major National Institute of Justice–funded evaluation. Georgia established the most noted “prison diversion” program to which convicted offenders were sentenced by judges under criteria that directed the judge to use ISP only for offenders who otherwise would have been sent to prison. An in-house evaluation concluded that most ISP participants had been diverted from prison and, on the basis of comparisons with a matched group of offenders who were imprisoned, that the program had achieved lower recidivism
rates and had reduced prison use (Erwin 1987). Subsequent analyses by others concluded that most participants had not been diverted from prison, that the comparison group was not comparable, that low rates of new crimes resulted not from the program but from the low-risk nature of the offenders, and that prison beds had not been saved (Morris and Tonry 1990, chap. 7; Clear and Byrne 1992).

The second form, “prison-release ISP,” had as its evaluated exemplar a New Jersey program to which low-risk prisoners were released after a careful seven-step screening process and then placed in low caseloads with frequent contacts and urinalyses and rigorously enforced conditions. A major evaluation, based on a post hoc comparison group, concluded that the program was effectively implemented, reduced recidivism rates, and saved public moneys (Pearson 1987). Subsequent analyses by others accepted the implementation finding but challenged the recidivism findings (because the comparison group appeared to consist of higher-risk offenders and thus was not comparable) and the cost findings (nearly half of the initial participants were sent back to prison following revocation for breach of conditions, which, given the short sentences they would otherwise have served and the costs of processing the revocations, made cost-savings claims suspect) (Morris and Tonry 1990, chap. 7). Clear hypothesized that judges might sentence low-risk minor offenders to prison in the belief that they would be released to ISP and that, if under 2 percent of the eligible defendants were sentenced to prison on that basis, any possible cost savings from ISP would be lost (Clear 1987).

The third form, “case management ISP,” had as its evaluated exemplar a Massachusetts program designed by the state probation department in which probationers were classified on the basis of risk of offending (using a validated risk-classification instrument). The evaluation documented significant implementation problems and concluded that offenders given intense supervision were no likelier than other comparable offenders to commit new crimes but were likelier to have their probation revoked because of technical condition violations (Byrne and Kelly 1989).

Notwithstanding the nonconfirmatory evaluation findings, ISP was adopted in most states. A General Accounting Office survey in 1989 identified programs in forty states and the District of Columbia (U.S. General Accounting Office 1990; Byrne and Pattavina 1992). Probably they exist in every state: programs can be organized by state or county correctional agencies; can be located in parole, probation, and prison
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departments; and as a result are easy to miss in national mail and phone surveys.

Although ad hoc intensive supervision in individual cases presumably occurs in every probation system, no other country has adopted widespread programs of intensive probation. Small-scale pilot projects were started in the Netherlands in 1993 (Tak 1994a, 1994b). In England, as in the United States, variable caseload projects to test treatment effectiveness hypotheses were conducted in the 1960s and early 1970s, with the same discouraging results (Folkard et al. 1974, 1976), and were soon abandoned. A series of pilot projects in eight sites, linked with Home Office evaluations, has been under way in England and Wales in the 1990s with as-yet inconclusive results. The programs appear to have diverted offenders from prison and to have met with approval from judges and probation officers, but in many sites they seem to have encountered substantial implementation problems (Mair 1994; Mair et al. 1994). Findings on recidivism effects will not be available until 1996 (or later).

Two exhaustive syntheses of the American ISP literature have been published (U.S. General Accounting Office 1990; Petersilia and Turner 1993) and do not differ significantly in their conclusions from those offered here. One question that naturally arises is why ISP programs have survived and continue to be created. Unlike boot camps, for which evaluation findings casting doubts on effectiveness are recent, the ISP findings have been well known and accepted since at least 1990. The answers appear to be that ISP's surveillant and punitive properties satisfy a public preference that sanctions be demanding and burdensome and that ISP is becoming seen as an appropriate mid-level punishment. Petersilia, Lurigio, and Byrne (1992, p. xiv) note, “To many observers, the goal of restoring the principle of just deserts to the criminal justice system is justification enough for the continued development of intermediate sanctions.”

Here, too, the policy implications are straightforward. Because recidivism rates for new crimes are no higher for ISP participants than for comparable imprisoned offenders, ISP is a cost-effective prison alternative for offenders who do not present unacceptable risks of violence. Intensive supervision programs may offer a promising tool for facilitating treatment for drug-using offenders and can by themselves and linked with other sanctions provide credible mid-level punishments as part of a continuum of sanctions.

The challenges are to devise ways to assure that programs are used
for the kinds of offenders for whom they are designed and to reduce rates of revocation for technical violations. The former problem does not exist for back-end early-release programs, and sentencing guidelines systems may hold promise for reducing the extent of net widening in front-end systems (see Section III below). The latter problem can be addressed, as Lurigio and Petersilia (1992, p. 14) note, by imposing only conditions that relate to a particular offender’s circumstances rather than by imposing long lists of general standard conditions.

C. House Arrest and Electronic Monitoring

The lines that distinguish community penalties begin to blur after ISP. House arrest, often called “home confinement,” has as a precursor the curfew condition traditionally attached to many probation sentences and may be ordered as a sanction in its own right or as a condition of ISP. Most affected offenders, however, do not remain in their homes but instead are authorized to work or participate in treatment, education, or training programs. Finally, house arrest is sometimes, but not necessarily, backed up by electronic monitoring; Renzema (1992), for example, reports that 10,549 people were on house arrest in Florida in August 1990, of whom 873 were on electronic monitoring.

House arrest comes in front- and back-end forms. In an early Oklahoma program (Meachum 1986), for example, prison inmates were released early subject to participation in a home confinement program. In Florida, which operates the largest and most diverse home confinement programs, most are front-end programs in which otherwise prison-bound offenders are supposed to be placed. In some states, especially in connection with electronic monitoring, house arrest is used in place of pretrial detention (Maxfield and Baumer 1990).

House arrest programs expanded rapidly beginning in the mid-1980s. The earliest programs were typically small (from thirty to fifty offenders) and often were composed mostly of driving-while-intoxicated and minor property offenders (this was also true of most of the early electronic monitoring programs) (Morris and Tonry 1990, chap. 7).

Programs have grown and proliferated. The largest program is in Florida where more than 13,000 offenders were on house arrest in 1993 (Blomberg, Bales, and Reed 1993). Programs coupled with electronic monitoring, a subset, existed nowhere in 1982, in seven states in 1986, and in all fifty states in October 1990 (Renzema 1992, p. 46).

Considered by itself, the use of electronic monitoring has grown
even more from its beginnings in 1983 in the New Mexico courtroom of Judge Michael Goss and the Florida courtroom of Judge J. Allison DeFoor II (Ford and Schmidt 1985). In 1986, only ninety-five offenders were subject to monitoring (Renzema 1992, p. 41), a number that rose to 12,000 in 1990 (Baumer and Mendelsohn 1992, p. 54) and to a daily count of 30,000–50,000 in 1992 and 1993 (Lilly 1993, p. 4).

Manufacturers of electronic monitoring equipment no doubt expect eventually to sell their products worldwide. Within the English-speaking countries, the United States is at present the major market. In early 1993, the Northern Territory of Australia was the only state operating front-end house arrest programs; Western Australia, South Australia, and Queensland operated prison-release programs. Altogether, these programs contained 330-400 offenders, of whom approximately half were subject to electronic monitoring (Biles 1993).

English policy makers toyed with electronic monitoring in the late 1980s and established a pilot project in three sites in 1989–90. Judges and police were skeptical about the use of electronically monitored house arrest as a custody alternative, and rates of offender noncompliance were high (Mair and Nee 1990; Mair 1993a). The evaluators characterized their findings as inconclusive. Although the Criminal Justice Act of 1991 authorized use of electronic monitoring in conjunction with curfew orders, no monitoring equipment was in use in England and Wales late in 1994.

No American evaluations of electronic monitoring on the scale or with the sophistication of the best on boot camps or ISP have been published. One analysis of agency data for Florida's front-end house arrest program concluded that it draws more offenders from among the prison-bound than from the probation-bound (Baird and Wagner 1990). However, this conclusion is based on two dubious analyses. The first looked to see whether offenders on house arrest should, under Florida's sentencing guidelines, have been sentenced to confinement. This seemingly straightforward calculation assumes, however, that the guidelines then in effect were taken seriously by Florida judges and significantly constrain their choices; the conclusion of a legislative study committee is that they did not (Florida Legislature 1991).

The second diversion analysis was based on statistical comparison of characteristics of samples of probationers, house arrest offenders, and prisoners, and it concluded that those on house arrest more closely resembled prisoners than probationers. This is like the ISP evaluations in Georgia and New Jersey that were later challenged on the basis that
seemingly comparable groups were not. Part of the problem lies in inherent limits of efforts to use statistical models to create equivalent comparison groups and part in the limited range of data about offenders that is compiled in official records.

A case study of the development, implementation, and evolution of a back-end program in Arizona cautions that house arrest programs are likely to share the prospects and problems of intermediate sanctions generally. Originally conceived as a money-saving system for early release of low-risk offenders, the program—which combined house arrest with electronic monitoring—wound up costing money. One problem was that, in addition to satisfying stringent statutory criteria (no violent or sex crimes, no prior felony convictions), inmates had to be approved for release by the parole board, which proved highly risk averse and released very few eligible inmates. When the program became operational, the rate of revocation for technical violations (34 percent of participants) was twice that for ordinary parolees. Finally, many probation officers began to justify the program, not as an early-release system for low-risk offenders, but as a mechanism for establishing tighter controls and closer surveillance for parolees than would otherwise be possible (Palumbo, Clifford, and Snyder-Joy 1992).

There are no other large-scale evaluations. House arrest coupled with electronic monitoring has been the subject of many small studies and a linked set of three studies in Indianapolis (Baumer, Maxfield, and Mendelsohn 1993). Both of two recent literature reviews (Baumer and Mendelsohn 1992; Renzema 1992) stress the scantiness of the research evidence on prison diversion, recidivism, and cost-effectiveness. On recidivism, Renzema (1992, p. 49) notes that most of the "research is uninterpretable because of shoddy or weak research designs." Baumer and Mendelsohn (1992, pp. 64–65) stress that "the incapacitative and public safety potential of this sanction has probably been considerably overstated" because the technology cannot control offenders' movement. They predict that house arrest will continue primarily to be used for low-risk offenders and will play little role as a custody alternative.

Thus, while a fair amount has been learned about the operation and management of electronic monitoring systems, about technology, and about implementation of new programs (e.g., Baumer and Mendelsohn 1992; Watts and Glaser 1992), the most comprehensive review of the research observes that "we know very little about either home confinement or electronic monitoring" (Baumer and Mendelsohn 1992,
There seems little reason to believe that house arrest is any less vulnerable to net widening than is ISP or likely to achieve different findings on recidivism.

D. Day Reporting Centers

Day reporting centers, like the remaining two sanctions discussed, community service and day fines, differ from those discussed so far in that they were developed earlier and much more extensively outside the United States than in. The earliest American day reporting centers—places in which offenders spend their days under surveillance and participating in treatment and training programs while sleeping elsewhere—date from the mid-1980s. The English precursors, originally called day centers and now probation centers, began operation in the early 1970s. Most of our knowledge of American day reporting centers comes from descriptive writing; no published literature as yet provides credible findings on the important empirical questions.

The English programs date from creation of four “day-training centres” established under the Criminal Justice Act of 1972, charged to provide intensive training programs for persistent petty offenders whose criminality was believed rooted in general social inadequacy, and from creation of ad hoc day centers for serious offenders that were set up by a number of local probation agencies. The training centers for a number of reasons were adjudged unsuccessful and were soon canceled.

The probation-run day centers, however, thrived, becoming the “flavor of the month” after enabling legislation was enacted in 1982, numbering at least eighty by 1985, and serving thousands of offenders by the late 1980s (Mair 1993b, p. 6). Programs vary, with some emphasizing control and surveillance more than others, some operating as a therapeutic community, and most offering a wide range of (mostly compulsory) activities. The maximum term of involvement is sixty days, and some programs have set thirty-day or forty-five-day limits.

A major Home Office study (Mair 1988) concluded that “most centres unequivocally saw their aim as diversion from custody” (Mair 1993b, p. 6), that more than half of the participating offenders had previously been imprisoned, and that 47 percent had six or more prior convictions. A later reconviction study (Mair and Nee 1992) found a two-year reconviction rate of 63 percent. However, Mair writes, though “on the face of it this may look high . . . the offenders targeted by centres represent a very high-risk group in terms of probability of
reconviction” (Mair 1993b, p. 6). In addition, the reconviction data did not distinguish between those who completed the program and those who failed. The results were seen as so promising that the Criminal Justice Act of 1991 envisioned a substantial expansion in use of day reporting centers.

A 1989 survey for the National Institute of Justice identified twenty-two day reporting centers in eight states (Parent 1990), though many others have since opened. Most American centers opened after 1985. The best-known (at least the best-documented) centers were established in Massachusetts—in Springfield (Hampton County Sheriff’s Department) and in Boston (the Metropolitan Day Reporting Center)—and both were based in part on the model provided by the English day centers (Larivee 1991; McDevitt and Miliano 1992).

As with the English centers, American programs vary widely. Many are back-end programs into which offenders are released early from jail or prison. Some, however, are front-end programs to which offenders are sentenced by judges, and some are used as alternatives to pretrial detention (Parent 1990). Programs range in duration from forty days to nine months, and program content varies widely (Parent 1991). Most require development of hour-by-hour schedules of each participant’s activities; some are highly intensive with ten-or-more supervision contacts per day; and a few include twenty-four-hour-per-day electronic monitoring (McDevitt and Miliano 1992). Unfortunately, no substantial evaluations have been published (a number of small in-house evaluations are cited in Larivee [1991] and McDevitt and Miliano [1992]).

E. Community Service

Community service is the most underused intermediate sanction in the United States. Used in many countries as a mid-level penalty to replace short prison terms for moderately severe crimes, community service in the United States is used primarily as a probation condition or as a penalty for trifling crimes like motor vehicle offenses. This is a pity because community service is a burdensome penalty that meets with widespread public approval (e.g., Doble, Immerwahr, and Robinson 1991), is inexpensive to administer, produces public value, and can be scaled to a degree to the seriousness of crimes.

Doing work to benefit the community as a substitute for other punishments for crime has a history that dates at least from Imperial Rome. Modern use, however, is conventionally dated from a 1960s effort by
judges in Alameda County, California, to avoid having to impose fines for traffic violations on low-income women, when they knew that many would be unable to pay and would be in danger of being sent to jail as a result.

The California program attracted widespread interest and influenced the establishment of community service programs in the United States and elsewhere. The English pilot projects in the early 1970s (Young 1979), followed by Scottish pilots in the late 1970s (McIvor 1992), discussed below, both led to programs that have been fully institutionalized as a penalty that lies between probation and imprisonment in those countries' sentencing tariffs. Many millions of dollars were spent in the 1970s by the American Law Enforcement Assistance Administration, for programs for adults, and by the Office for Juvenile Justice and Delinquency Prevention, for programs for children, but with little lasting effect (McDonald 1992).

Community service did not come into widespread use as a prison alternative in the United States (Pease [1985] and McDonald [1986] provide detailed accounts with many references). Largely as a result, there has been little substantial research on the effectiveness of community service as an intermediate punishment (Pease 1985; Morris and Tonry 1990, chap. 6; McDonald 1992).

With the exception of one major American study (McDonald 1986), the most ambitious evaluation research has been carried out elsewhere. In England and Wales, Scotland, and the Netherlands, community service orders (CSOs) were statutorily authorized with the express aim that they serve as an alternative to short-term incarceration. In each of those countries, research was undertaken to discover whether CSOs were being used as replacements for short-term prison sentences (generally, yes, in about half of cases) and whether their use had any effect on recidivism rates for new crimes (generally, no). The American study, of a pilot community service program in New York City intended to substitute for jail terms up to six months, reached similar results (McDonald 1986).

Community service orders in 1993 constituted 30 percent of all sentences for serious crimes in England and Wales (Home Office 1994). In law and in practice, CSOs are regarded as more intrusive and punitive than probation and are considered an appropriate substitute for imprisonment (Lloyd 1991). Community service orders can involve between 40 and 240 hours of work supervised by a community service officer; failure to participate or cooperate can result in revocation. It is
generally estimated that half of those sentenced to community service would otherwise be sentenced to prison and half to less severe penalties (Pease 1985). Reoffending rates are believed and generally found to be neither higher nor lower than those of comparable offenders sent to prison (Pease 1985).

The Scottish experience trails several years behind the English but closely resembles it. An experimental program was established in 1977; permanent enabling legislation was enacted in 1978; and CSOs were implemented nationwide in the early 1980s. Offenders are sentenced to 40–240 hours of work to be completed within one year. A five-year-long evaluation concluded that half of offenders sentenced to CSOs would otherwise have been confined, that both judges and offenders thought community service an appropriate penalty, and that reconviction rates after three years (63 percent) compared favorably with reconviction rates following incarceration (McIvor 1992, 1993).

The story in the Netherlands, where 10 percent of convicted offenders were sentenced to community service in 1992, and where government policy calls for successive annual 10 percent increases in the number of CSOs ordered, is similar. Pilot projects began in 1981 with the express aim of establishing a penalty that would be used in place of short terms of imprisonment. The British pattern of a maximum sentence of 240 hours to be performed within one year was followed. Evaluations reached the by-now expected conclusion that recidivism rates were no worse but that judges were using CSOs both for otherwise prison-bound and otherwise suspended sentence-bound offenders (with the balance as yet unknown) (van Kalmthout and Tak 1992; Tak 1994a, 1994b). In 1989, the Penal Code was amended to institutionalize CSOs as authorized sanctions.

The only well-documented American community service project, operated by the Vera Institute of Justice, was established in 1979 in the Bronx, one of the boroughs of New York, and eventually spread to Manhattan, Brooklyn, and Queens. The program was designed as a credible penalty for repetitive property offenders who had previously been sentenced to probation or jail and who faced a six-month or longer jail term for the current conviction. Offenders were sentenced to seventy hours community service under the supervision of Vera foremen. Participants were told that attendance would be closely monitored and that nonattendance and noncooperation would be punished. An agreement was struck with the judiciary that immediate arrest warrants would be issued and prompt revocation hearings held for noncompliant
participants. The goal was to draw half of participants from the target prison-bound group and half from offenders with less extensive records; after initial judicial reluctance was overcome (when only a third were prison diversions), the fifty-fifty balance was achieved. An extensive and sophisticated evaluation concluded that recidivism rates were unaffected by the program, that prison diversion goals were being met, and that the program saved taxpayers' money (McDonald 1986, 1992).

For offenders who do not present unacceptable risks of future violent (including sexual) crimes, a punitive sanction that costs much less than prison to implement, that promises no higher reoffending rates, and that creates negligible risks of violence by those who would otherwise be confined has much to commend it.

Both American and European research and experience show that community service can serve as a meaningful, cost-effective sanction for offenders who would otherwise have been imprisoned. Why it has not been used in that way in the United States is a matter for conjecture, to which I return in Section III below.

F. Monetary Penalties

Monetary penalties for nontrivial crimes have yet to catch on in the United States. That is not to deny that millions of fines are imposed every year. Studies conducted as part of a fifteen-year program of fines research coordinated by the Vera Institute of Justice showed that fines are nearly the sole penalty for traffic offenses and in many courts are often imposed for misdemeanors (Hillsman, Sichel, and Mahoney 1984; Cole et al. 1987). And in many courts, most fines are collected. Although ambiguous lines of authority and absence of institutional self-interest sometimes result in haphazard and ineffective collection, courts that wish to do so can be effective collectors (Cole 1992).

Nor is it to deny that convicted offenders in some jurisdictions are routinely ordered to pay restitution and in most jurisdictions are routinely ordered to pay growing lists of fees for probation supervision, for urinalyses, and for use of electronic monitoring equipment. A survey of monetary exactions from offenders carried out in the late 1980s identified more than thirty separate charges, penalties, and fees that were imposed by courts, administrative agencies, and legislatures (Mullaney 1988). These commonly included court costs, fines, restitution, and payments to victim compensation funds. They often included a variety of supervision and monitoring fees and, in some jurisdictions (including the federal system under the Sentencing Reform Act of
1984), extended to repayment to the government of the full costs of prosecution and of carrying out any sentence imposed.

The problem is neither that monetary penalties are not imposed nor that they cannot be collected, but that, as Cole and his colleagues reported when summarizing the results of a national survey of judges' attitudes about fines, "at present, judges do not regard the fine alone as a meaningful alternative to incarceration or probation" (Cole et al. 1987).

This American inability to see a fine as a serious penalty stands in marked contrast to the legal systems of other countries. In the Netherlands, the fine is legally presumed to be the preferred penalty for every crime, and Section 359(6) of the Code of Criminal Procedure requires judges to provide a statement of reasons in every case in which a fine is not imposed. In Germany in 1986, for another example, 81 percent of all sentenced adult criminals were ordered to pay a fine, including 73 percent of those convicted of crimes of violence (Hillsman and Greene 1992, p. 125). In Sweden in 1979, fines constituted 91 percent of all sentences (Casale 1981). In England in 1980, fines were imposed in 47 percent of convictions for indictable offenses (roughly equivalent to American felonies); these included 45 percent of convicted sex offenders, 24 percent of burglars, and half of those convicted of assault (Morris and Tonry 1990, chap. 4).

European monetary penalties for serious crimes take two forms. The first is the "day fine," in use in the Scandinavian countries since the turn of the century and in Germany since the 1970s, which scales fines both to the defendant's ability to pay (some measure of daily income) and to the seriousness of the crime (expressed as the number of daily income units assessed) (Grebing 1982). The second is the use of the fine as a prosecutorial diversion device; in exchange for paying the fine, often the amount that would have been imposed after conviction, the criminal charges are dismissed.

Only the day fine has attracted much American attention. Some of the efforts to establish day-fine systems are discussed below. First, though, some discussion of the remarkable success of prosecutorial diversion programs seems warranted. In Sweden, prosecutors routinely invite defendants they intend to charge to accept a fine calculated on day-fine principles in exchange for dismissal of the charges. Nearly 70 percent of fines are imposed in this way (Casale 1981; Morris and Tonry 1990, p. 144).

Under Section 153a of the German Code of Criminal Procedure, in
effect since 1974, the prosecutor, if "convinced of the defendant's guilt," may propose a conditional dismissal under which the defendant agrees to pay a fine. If the charges are serious, the judge must approve the arrangement (approval is seldom withheld). The defendant need not confess guilt. Two hundred forty thousand cases were resolved by conditional dismissal in 1989, constituting a 16 percent reduction in indictments that would otherwise have been filed (Weigend 1993).

In the Netherlands, the 1983 Financial Penalties Act authorized prosecutors to resolve criminal cases by means of an arrangement comparable to the German conditional dismissal. Defendants charged with crimes bearing maximum possible six-year prison sentences are eligible. The prosecution is terminated but can be reinstated if the defendant commits a new crime within three years. The prosecutorial diversion program has been credited with keeping the number of criminal trials stable between 1980 and 1992, despite a 60 percent increase in recorded crime. Two thirds of criminal cases are settled out of court by prosecutors (Tak 1994a).

Despite the substantial successes of fines as part of prosecutorial diversion programs in Sweden, Germany, and the Netherlands, the day fine has received principal attention as a penal import from Europe. The results to date are at best mildly promising. The initial pilot project was conducted in Staten Island, New York, in 1988–89, again under the auspices of the Vera Institute of Justice. Judges, prosecutors, and other court personnel were included in the planning, and implementation was remarkably successful. Most judges cooperated with the new voluntary scheme, the distribution of fines imposed changed in ways that showed that judges were following the system, the average fine imposed increased by 25 percent, the total amount ordered on all defendants increased by 14 percent, and 70 percent of defendants paid their fines in full (Hillsman and Greene 1992).

The Staten Island findings, while not unpromising, are subject to two important caveats. First, the participating court had limited jurisdiction and handled only misdemeanors; the use of day fines for felonies thus remains untested. Second, applicable statutes limited total fines for any charge to $250, $500, or $1,000, depending on the misdemeanor class, and thus artificially capped fines at those levels and precluded meaningful implementation of the scheme in relation to other than the lowest-income defendants.

A second modest pilot project was conducted for twelve weeks in 1989 in Milwaukee (McDonald, Greene, and Worzella 1992), and four
projects funded by the Bureau of Justice Assistance operated for various periods between 1992 and 1994 in Maricopa County (Phoenix), Arizona; Bridgeport, Connecticut; Polk County, Iowa; and Coos, Josephine, Malheur, and Marion Counties in Oregon (Turner 1992). The Milwaukee project applied only to noncriminal violations, resulted in reduced total collections, and was abandoned. The Phoenix project, known as FARE (for Financial Assessments Related to Employability), was conceived as a mid-level sanction between unsupervised and supervised probation. The Iowa pilot included only misdemeanants, and the Oregon projects included misdemeanants and probationable felonies (excluding Marion County, the largest, which covered only misdemeanants). Only in the Connecticut project did the pilot cover a range of felonies and misdemeanors.

A RAND Corporation evaluation of the Arizona, Connecticut, Iowa, and Oregon projects was funded by the National Institute of Justice, but no results had been released by June 1995. Given the limited reach of the projects, however, the results are unlikely to demonstrate that day fines show promise of becoming an intermediate sanction capable—as in Europe—of diverting large numbers of felony offenders from prison.

A further cautionary note comes from England and Wales, which tried, unsuccessfully, to launch a day-fine system (because calculations were based on weekly rather than daily income, it was called a “unit-fine” system). Following a pattern that previous mentions of English research on electronic monitoring and ISP will make familiar, pilot projects to test the feasibility of unit fines were established in four magistrates’ courts and evaluated by the Home Office Research and Planning Unit. The findings were positive: magistrates and other court personnel were pleased with the new system, anticipated problems about learning defendants’ incomes proved soluble, low-income defendants received smaller fines, and more fines were fully paid, and earlier, than previously (Moxon, Sutton, and Hedderman 1990; Moxon 1992). As a result, the Criminal Justice Act of 1991, which effected a substantial overhaul of English sentencing laws, established a national system of unit fines to take effect in October 1992.

The unit-fines system was abandoned seven months later. The reasons remain unclear. The immediate precipitant was a series of media stories of preposterous sentences that discredited the entire system. In one case, a defendant was fined £1,200 (late in 1994, = U.S.$1,920) for throwing a potato chip bag on the ground. In another much-
publicized case, a defendant was fined £500 for illegal parking after his car, worth £250, broke down on a road where parking was prohibited (Moxon 1993).

Why those (and many comparable) cases were sentenced as they were, and why the government so quickly repudiated its own innovation, are unclear. The immediate problem was overly literal application of the system. The minimum unit was set at £4 and the maximum unit at £100. To deal with the problem of defendants who do not provide income information, the policy was set in some courts that the maximum authorized amount would be presumed to apply in such cases. What was not planned for was default cases in which the defendant does not appear. What could have been a £20 fine in the illegal parking case became instead £500. In the littering case, the £1,200 fine was reduced to £48 on appeal.

The specific problems that deprived the scheme of its credibility and led to its repeal were soluble. Some observers speculated that many magistrates disapproved in principle of what were in effect sentencing guidelines for fines and used overly literal enforcement to undermine it. Some blamed the developers for setting the maximum unit amount too high (£20 was the limit in the pilot projects) and for not anticipating foreseeable problems in implementation and application. Whatever the real explanation, the system is no longer, and developers of day-fine systems in the United States will ignore the English experience at their peril.

III. Is There a Future for Intermediate Sanctions?

Despite the seemingly disheartening evaluation findings that suggest that most intermediate sanctions do not reduce recidivism, corrections costs, and prison crowding while simultaneously enhancing public safety, there is a future for intermediate sanctions.

There is a need to develop credible, enforceable sanctions between prison and probation that can provide appropriate deserved penalties for offenders convicted of mid-level crimes, and numerous studies document the capacity of well-managed corrections departments to implement such programs. There is a need, for their sake and ours, to help offenders establish conventional, law-abiding patterns of living, and the evaluation literature suggests ways that can be facilitated. There is a need to develop intermediate sanctions that can serve as cost-effective substitutes for confinement, and the evaluation literature suggests how that can be done. Finally, there is a need to devise ways to assure that
intermediate sanctions are used for the kinds of offenders for whom particular programs were created, and experience with parole and sentencing guidelines shows how that can be done.

Three major obstacles stand in the way. The first, the most difficult, is the modern American preoccupation with absolute severity of punishment and the related widespread view that only imprisonment counts. The average lengths of prison sentences in the United States are much greater in the United States than in other Western countries (Tonry 1995, table 7-1). The ten-, twenty-, and thirty-year minimum sentences that are in vogue for drug crimes are unimaginable in most countries. Despite a trebling in the average severity of prison sentences for violent crimes between 1976 and 1989 established by the National Academy of Sciences Panel on the Understanding and Control of Violence (Reiss and Roth 1993), and additional increases since 1989, federal crime legislation passed in 1994 conditions prison construction grants to states on substantial additional increases in sentences for violent offenders, using 1993 averages as a base (Wallace 1994).

This absolute severity frustrates efforts to devise intermediate sanctions for the psychological (not to mention political) reason that few other sanctions seem commensurable with a multiyear prison sentence. Data presented above, for example, show that half or more offenders convicted of violent crimes in Sweden, Germany, and England are sentenced to fines (abandonment of unit fines in England did not result in a reduction in use of fines, which continued to be imposed on a "tariff" fixed-amount basis).

In those countries, the prison sentences thereby avoided would have involved months or at most a few years, making a burdensome financial penalty an imaginable alternative. By contrast, most of the American day-fine pilot projects would use day fines as punishments for misdemeanors or noncriminal ordinance violations or as a mid-level punishment between supervised and unsupervised probation. Likewise, with the rare exception of New York's community service project started by the Vera Institute, CSOs are generally ordered as probation conditions and not as sentences in their own right.

Data presented above, for another example, document successful efforts to replace prison sentences of six or fewer months (moderately severe penalties in those countries) with day fines in Germany (Weigend 1992) and with community service orders in the Netherlands (Tak 1994b). In Sweden, however, less than a quarter of prison sentences are to terms of six months or longer (Jareborg 1994), and in the
Netherlands less than 15 percent are for a year or longer. Equivalent crimes in the United States would be punished by terms measured in years; in 1991, 90 percent of state inmates were sentenced to terms longer than one year, and 57 percent to terms longer than five years (Beck et al. 1993).

Because the modern emphasis on absolute severity of crime is the product of partisan and ideological politics, it will not readily be changed. It does, however, stand in the way of substantial development of a continuum of punishments in which moderately punitive and intrusive sanctions serve as penalties—in place of incarceration—for moderately severe crimes.

The second, not unrelated obstacle to fuller development of intermediate sanctions is widespread commitment to “just deserts” rationales for punishment and the collateral idea that the severity of punishment should vary directly with the seriousness of the crime. This has been translated in the federal and most state sentencing guidelines systems into policies that tie punishments to the offender’s crime and criminal history and little else.

Such policies and their commitment to “proportionality in punishment” constitute a gross oversimplification of the cases that come before criminal courts. Crimes that share a label can be very different; robberies range from schoolyard takings of basketballs to gangland assaults on banks. Offenders committing the same crime can be very different; a thief may have been motivated by a sudden impulse, by the need to feed a hungry child, by a craving to buy drugs, or by a conscious choice to make a living as a thief.

Punishments likewise vary. Despite a common label, two years’ imprisonment can be served in a maximum security prison of fear and violence, in a minimum security camp, at home under house arrest, or in some combination of these and other regimes. Even a single punishment may be differently experienced: three years’ imprisonment may be a rite-of-passage for a young gang member, a death sentence for a frail seventy-year-old, or the ruin of the lives of an employed forty-year-old man and his dependent spouse and children.

Nonetheless, commitment to ideas of proportionality is widespread, and it circumscribes the roles that intermediate sanctions can play. Although few people would disagree with the empirical observations in the preceding paragraph, sentencing policies based on ideas of proportionality somehow reify the sentencing categories into something meaningful. If guidelines specify a twenty-four-month prison term for
offense $X$ with criminal history $Y$, it seems unfair to sentence one offender to community service or house arrest when another similarly situated (in the narrow terms of the guidelines) is sentenced to twenty-four months. It seems more unfair to sentence one offender subject to a twenty-four-month guidelines sentence to house arrest when an offender convicted of a less serious crime receives an eighteen-month prison sentence.

Commitment to proportionality interacts with the modern penchant for severe penalties. If crimes punished by months of incarceration in other countries are punished in years in the United States, comparisons between offenders are more stark. If in Sweden two offenses are ordinarily punished by thirty- and sixty-day prison terms, imposition of a day-fine order on the more serious offender—out of consideration for the effects of a prison term on his family and employment—produces a contrast between a thirty-day sentence and a sixty-unit day fine. Convert the example to American presumptive sentences of two and four years, and the contrast is jarring between any intermediate sanction and a two-year sentence for someone convicted of a less serious crime.

Net widening is the third obstacle to further development of intermediate sanctions. As discussed earlier, there is a natural tension between practitioners making decisions in individual cases and policy makers trying to take a systems perspective and set policy goals for bureaucratic organizations. In a jurisdiction that lacks well-developed community penalties, it is understandable that judges and prosecutors want to use newly available resources for what seem to them suitable offenders. From the perspective of system planners, however, sentencing otherwise probation-bound offenders to a program intended for prison-bound offenders frustrates the purpose of the program.

There are two solutions to the net-widening problem. The first is to shift control over program placements from judges to corrections officials wherever possible. For some programs such as boot camps and back-end forms of ISP and house arrest, this is relatively easy and would make it likelier that such programs would achieve their goals of saving money and prison space without increasing recidivism rates.

Transfers of authority to corrections officials can, however, at best be a partial solution. No one (whom we know or can imagine) wants all sentencing authority shifted into bureaucratic hands, and judges therefore will retain authority to decide who will be sent to jail or prison. A little more plausible alternative would be to limit judicial authority to the choice between prison and probation and to allow
probation and prison authorities to decide what other sanctions (house arrest, ISP, treatment participation, etc.) should be applied either as probation conditions or as custodial regimes.

Few people would want to place full authority over questions of confinement in bureaucratic hands. Judges are after all concerned with questions of liberty and justice, and most people would probably rest easier having judges making threshold decisions about confinement. In addition, it is hard to imagine any role for fines and community service in a sentencing system where judges lacked authority to order such sentences.

The alternative is to structure judges’ decisions about intermediate sanctions by use of sentencing guidelines. A substantial body of evaluation and other research demonstrates that well-conceived and implemented guidelines systems can change sentencing patterns in a jurisdiction and achieve high levels of judicial compliance (sometimes, as in the federal guidelines, grudging compliance) (Tonry 1993).

Most state guidelines systems, however, establish presumptions for who is sent to state prisons, and for how long, but do not set presumptions concerning nonprison sentences or choices between prison and other sanctions. Two broad approaches for setting guidelines for non-prison sentences have been tried (the literature is tiny: von Hirsch, Wasik, and Green 1989; Morris and Tonry 1990).

The first, which seems to have been a dead end, is to establish “punishment units” in which all sanctions can be expressed. Thus, a year’s confinement might equal ten units, a month of house arrest three units, and a month’s community service two units. A twenty-unit sentence could be satisfied by any sanction or combination of sanctions equaling twenty. This idea was taken furthest in Oregon, where sentencing guidelines, in addition to setting presumptive ranges for jail and prison sentences, specified a number of punishment units for offenders not presumed bound for state prison. Oregon, however, never set policies governing unit values, sometimes metaphorically described as “exchange rates,” and neither there nor anywhere else has the idea been taken further.

The overwhelming problem lies in the idea of proportionality mentioned earlier and can be illustrated by Washington State’s more modest effort at exchange rates. Partial confinement and community service were authorized as substitutes for presumptive prison terms on the basis of one day’s partial confinement or three day’s community service for one day of confinement. The partial confinement/confinement ex-
change is probably workable (for short sentences; house arrest, assum-
ing that to count as partial confinement, is seldom imposed for more
than a few months), but the community service exchange is not.

Starting with the idea that imprisonment is more unpleasant than
community service, the Washington State Sentencing Guidelines
Commission (1993) initially decided that the exchange must be gov-
erned by an idea of comparable intrusion in the offender's life; hence,
three eight-hour days' community service per day in prison. The diffi-
culty is that community service programs to be credible must be en-
forced, and experience in this country and elsewhere instructs that
they must be short. That is why the New York program provided
seventy hours' obligation, and the Dutch, English, and Scottish pro-
grams established an upper limit of 240 hours. Under Washington's
policy, that range would permit community service in place of three
to ten days' confinement.

It is easy to criticize the Oregon commission for not carrying its
innovation further and the Washington commission for lack of imagina-
tion, but that would be unfair. Working out exchange rates in a system
predicated on strong ideas of proportionality in punishment is very
difficult, if not impossible. If punitive literalism governs, the range for
substitution between prison and community penalties is tiny. A system
like New York's community service program—which substitutes sev-
enty hours' work for six months' jail—can be justified (the idea was to
give repetitive property offenders some meaningful enforced penalty
rather than impose a jail term that no one expected would have deter-
rent effects), but it requires a loosening of proportionality constraints
that no sentencing commission has yet been prepared to accept. The
Pennsylvania Commission on Sentencing in 1993 gave serious consid-
eration to a punishment unit system, but abandoned it when the prob-
lem of exchange rates proved insoluble. (There are other problems
with the punishment unit approach: inevitably the exchange rates are
arbitrary; if conditions like treatment participation, drug testing, and
electronic monitoring are given unit values, comparisons between of-
fenders become even more implausible.)

The other approach is to establish different areas of a guidelines grid
in which different presumptions about choice of sentence govern. Both
North Carolina and Pennsylvania adopted such systems in 1994. One
set of crime/criminal history combinations is presumed appropriate
only for prison sentences; a second is presumed subject to a judicial
choice between prison sentences or intensive community sanctions (in-
Including split sentences with elements of both); a third is presumed subject to a choice between intensive or nonintensive community sanctions (or some of both); and a fourth is presumed subject only to nonintensive community sanctions. A system like this was proposed by the District of Columbia Superior Court Sentencing Commission in 1987 but never took effect. The Pennsylvania and North Carolina systems took effect in the fall of 1994; how they will work in practice remains to be seen.

Readers, we hope, will draw at least six conclusions from this essay. First, for offenders who do not present unacceptable risks of violence, well-managed intermediate sanctions offer a cost-effective way to keep them in the community at less cost than imprisonment and with no worse later prospect for criminality.

Second, boot camps, house arrest, and intensive supervision are highly vulnerable to net widening when entry is controlled by judges. For boot camps, the solution is easy: have corrections officials select participants from among admitted prisoners. For house arrest and ISP, the solution is less easy: corrections officials can control entry to back-end programs, and sentencing guidelines may be able to structure judges' decisions about admission to front-end programs.

Third, community service and monetary penalties remain woefully underdeveloped in the United States, and much could be learned from Europe. Day fines remain as yet a promising idea, but it has not yet been demonstrated that they can win acceptance as penalties for non-trivial crimes. Conditional discharges, in which convictable defendants pay a substantial fine in exchange for conditional dismissal of charges, like those common in Sweden, the Netherlands, and Germany, remain unexplored as a potentially useful European penal import.

Fourth, front-end intermediate sanctions are unlikely to come into widespread use as prison alternatives unless sentencing theories and policies become more expansive and move away from oversimplified ideas about proportionality in punishment.

Fifth, intermediate sanctions may offer promise as a way to get and keep offenders in drug and other treatment programs. With drug treatment programs, at least, there is evidence that coerced treatment programs can reduce both later drug use and later crimes, and there is evidence in the ISP and boot camp literatures that these programs can increase treatment participation.

Sixth, there is no free lunch. The failure of most intermediate sanctions to achieve promised reductions in recidivism, cost, and prison
use were never realistic, though for the most part they were offered in good faith. Intermediate sanctions can reduce costs and divert offenders from imprisonment, but those results are not easy to obtain.

REFERENCES


Intermediate Sanctions


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