

No. 1990-193

AN ACT

SB 718

Providing for county intermediate punishment programs; and conferring powers and duties on the Pennsylvania Commission on Crime and Delinquency and the Pennsylvania Commission on Sentencing.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the County Intermediate Punishment Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” A county prison board, in counties of the first and second class, the Criminal Justice Coordinating Commission or its successor agency.

“Commission.” The Pennsylvania Commission on Crime and Delinquency.

“County intermediate punishment plan.” A document which describes a proposed intermediate punishment program.

“County intermediate punishment program.” A residential or nonresidential program provided in a community for eligible offenders.

“Court.” The trial judge exercising sentencing jurisdiction over an eligible offender under this act.

“Eligible offender.” A person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate a present or past pattern of violent behavior and who would otherwise be sentenced to partial confinement pursuant to 42 Pa.C.S. § 9724 (relating to partial confinement) or total confinement pursuant to 42 Pa.C.S. § 9725 (relating to total confinement). The term does not include any offender convicted of murder, voluntary manslaughter, rape, statutory rape, aggravated assault, robbery, burglary of the first degree as provided in 18 Pa.C.S. § 3502 (relating to burglary), involuntary deviate sexual intercourse, arson, extortion accompanied by threats of violence, assault by prisoner, assault by life prisoner, kidnapping, aggravated indecent assault or escape or a violation of 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing and penalties).

“Nonprofit agency.” A not-for-profit human service organization which provides treatment, guidance, counseling, training or rehabilitation services to individuals, families or groups.

Section 3. Purpose.

County intermediate punishment programs shall be developed, implemented and operated for the following purposes:

- (1) To protect society and promote efficiency and economy in the delivery of corrections services.
- (2) To promote accountability of offenders to their local community.
- (3) To fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court.
- (4) To provide opportunities for offenders who demonstrate special needs to receive services which enhance their ability to become contributing members of the community.

Section 4. County intermediate punishment program.

(a) Description.—County intermediate punishment program options include all of the following:

- (1) Noncustodial programs which involve close supervision, but not housing, of the offender in a facility, including, but not limited to:
 - (i) Intensive probation supervision.
 - (ii) Victim restitution or mediation.
 - (iii) Alcohol or drug outpatient treatment.
 - (iv) House arrest and electronic monitoring.
 - (v) Psychiatric counseling.
 - (vi) Community service.
- (2) Residential inpatient drug and alcohol programs based on objective assessments that an offender is dependent on alcohol or drugs or a residential rehabilitative center.
- (3) Individualized services which evaluate and treat offenders, including psychological and medical services, education, vocational training, drug and alcohol screening and counseling, individual and family counseling and transportation subsidies.
- (4) Partial confinement programs, such as work release, work camps and halfway facilities.

(b) Eligibility.—

(1) No person other than the eligible offender shall be sentenced to a county intermediate punishment program.

(2) The Pennsylvania Commission on Sentencing shall employ the definition of "eligible offender" under section 2 to further identify offenders who would be appropriate for participation in county intermediate punishment programs. In developing the guidelines, the commission shall give primary consideration to protection of the public safety.

(3) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 3731(e) (relating to driving under influence of alcohol or a controlled substance) may only be sentenced to intermediate punishment program in:

- (i) a residential inpatient program or a residential rehabilitative center; or
- (ii) house arrest or electronic surveillance combined with drug and alcohol treatment.

Section 5. Boards.

(a) **Duty of board.**—To qualify for funding under this act, a board must develop a county intermediate punishment program plan to be submitted to the commission.

(b) **Joint judicial districts.**—Where two counties comprise a joint judicial district, the counties may jointly submit a plan, which shall require the concurrence of a majority of members from the boards of each county. The president judge of the judicial district shall chair the meetings of both boards for actions necessary pursuant to this act.

(c) **Counties with no board.**—If a county of the sixth, seventh or eighth class does not have a prison board, the county shall establish an intermediate punishment board for the purpose of complying with the requirements of this act. The intermediate punishment board shall consist of the president judge of the court of common pleas or his designee, the district attorney, the sheriff, the controller and the county commissioners.

(d) **Powers and duties.**—A board has the following powers and duties:

(1) To assess available countywide correctional services and future needs.

(2) To work with the county office of probation and parole in developing the county intermediate punishment plan.

(3) To adopt a county intermediate punishment plan, including program policies for administration.

(4) To make recommendations to the board of county commissioners, or chief executive officer in counties of the first class, on contracts with private providers or nonprofit agencies for the provision of intermediate punishment programs.

(5) To monitor the effectiveness of county correctional services and identify needed modifications.

(6) To make recommendations to the board of county commissioners, or chief executive officer in counties of the first class, regarding the purchase, lease or transfer of lands, buildings and equipment necessary to carry out the intermediate punishment plan.

(7) To designate the appropriate county office to maintain a case record for each individual admitted to a county intermediate punishment program within the county.

(8) To make an annual report on the program to the governing body of the county, the Pennsylvania Commission on Sentencing and the commission.

(9) To develop the county intermediate punishment plan under section 6.

Section 6. County intermediate punishment plan.

(a) **Requirement.**—The board may develop a plan for the implementation and operation of intermediate punishment programs in the county. The plan shall provide for all of the following:

(1) Training programs for the board and staff.

(2) Public information and education programs.

(3) Designation of an entity or county government office with overall responsibility for supervision of fiscal affairs of the program.

(4) Use of existing community agencies and organizations whenever possible.

(5) A mechanism to advise the courts of the extent and availability of services and programs provided under the plan.

(6) All costs associated with the county intermediate punishment program.

(7) For joint judicial districts, an agreement as to each county's responsibilities.

(b) Technical assistance.—The commission shall provide technical assistance to develop community corrections plans.

(c) Review and approval.—The plan shall be submitted to the commission for review and approval in the format designated by the commission. The commission shall complete its review within 90 days of submission. Failure to disapprove or recommend amendment within 90 days shall constitute approval.

(d) Formal submission.—The plan and any proposed changes thereto shall be submitted on an annual basis.

Section 7. Commission.

(a) Powers and duties.—The commission shall have the following powers and duties:

(1) Subject to the provisions of subsection (b), to adopt rules and regulations pursuant to this act regarding:

(i) The submission, review and approval of county intermediate punishment plans .

(ii) Standards for the development, operation and evaluation of programs and services. In promulgating regulations under this subparagraph, the commission shall consider comments submitted by the counties.

(iii) The administration and disbursement of funds under this act.

(2) To provide training and technical assistance to boards and program staff.

(3) To ensure that all programs are in compliance with applicable Federal, State and local law.

(4) To monitor county intermediate punishment programs to determine their impact on offenders.

(5) To remit funds as provided for under section 8.

(b) Interim regulations.—Pending adoption and publication of final rules and regulations, the commission shall have the power and authority to promulgate, adopt, publish and use interim regulations for the implementation of this act for a period of one year immediately following the effective date of the remainder of this act or until the effective date of final rules and regulations, whichever first occurs. Notwithstanding any other provision of law to the contrary, the interim regulations proposed under the authority of this section shall be subject to review by the general counsel and the Attorney General in the manner provided for the review of proposed rules and regula-

tions pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 8. Funding and audits.

(a) Eligibility.—Subject to the availability of funding, counties submitting plans to the commission shall be eligible for direct funding of 50% to 80% of the total cost of the program as determined by the commission. This act shall not prohibit the use of Federal funds.

(b) Audit.—Annual reports and all financial records shall be subject to annual audit by the Auditor General.

(c) Funding.—Funding under this act shall be reviewed on an annual basis. Funding shall be granted on the basis of local need, the quality of the county intermediate punishment program, consideration of whether the plan is consistent with the goals of this act, the extent of the county served and funding availability. Funding shall be made in a manner to provide the equal geographic development of county intermediate punishment programs. In addition, the commission shall consider the following criteria pertaining to the jurisdiction in question:

(1) Number of nonviolent commitments to the county correctional facilities.

(2) Population and existing conditions at the county correctional institution.

(3) Population of the county and percentage of population between 18 and 29 years of age.

(4) Sufficient local service capability to support the community corrections programs.

(5) Demonstrated involvement and support of the judiciary, criminal justice and correctional officials and local government.

Section 9. Prohibitions.

(a) General rule.—Recipients may not use funds granted under this act to supplant existing funds from the State or local government for existing correctional programs or for the construction, renovation or operation of a State, county or municipal incarceration facility except as provided by section 714 of the act of July 1, 1990 (P.L.315, No.71), known as the Prison Facilities Improvement Act.

(b) Administrative costs.—Administrative costs connected with the expenditure of county intermediate punishment funds under this act may not exceed a percentage amount established by the commission.

Section 10. Continued eligibility.

(a) Evaluation.—In order to remain eligible for continued grant funding, a county must comply with commission standards and regulations and participate in an evaluation to determine program effectiveness. The form of the evaluation will be determined by the commission.

(b) Suspension of funding.—If the commission determines that there are reasonable grounds to believe that a county is not complying with its plan or minimum standards, the commission shall give 30 days' written notice to the

board. If the commission finds noncompliance, it shall require the board to provide a written agreement as to how and when the specific deficiencies identified will be corrected. If no agreement is submitted to the commission within the time limit or if the deficiencies are not corrected within 45 days after an agreement has been approved by the commission, the commission may suspend part or all of the funding until compliance is achieved.

Section 11. Application of act to certain grants.

(a) *Limitations.*—No grant shall be awarded to any county under section 714 of the act of July 1, 1990 (P.L.315, No.71), known as the Prison Facilities Improvement Act, until the applicant county shall have submitted an intermediate punishment plan under this act.

(b) *Matching funds.*—Any county funds expended or committed for the development of an intermediate punishment plan and for the operation of intermediate punishment programs pursuant to this act shall also qualify for local matching funds for purposes of section 714 of the Prison Facilities Improvement Act.

Section 12. Use of Federal funds.

Nothing in this act shall prohibit the use of Federal funds for the funding of community intermediate punishment programs. The General Assembly directs the commission to examine the availability of Federal funds for the implementation of this act.

Section 13. Nonapplication of certain provisions.

The provisions of the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law, shall not apply to counties which jointly submit a plan under the provisions of this act.

Section 14. Construction of act.

Nothing in this act shall create an enforceable right in any person to participate in an intermediate punishment program in lieu of incarceration. Nothing in this act shall require any county to appropriate funds for the implementation of an intermediate punishment program except as may be necessary to qualify for funds under this act or under the act of July 1, 1990 (P.L.315, No.71), known as the Prison Facilities Improvement Act.

Section 15. Effective date.

This act shall take effect immediately.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY