

# Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of Corrections

(2) I.D. Number (Governor's Office Use)

19-9

IRRC Number: 2590

(3) Short Title

State Intermediate Punishment

(4) PA Code Cite

37 Pa. Code

Chapter 97

(5) Agency Contacts & Telephone Numbers

Primary Contact:

Randall N. Sears, Deputy Chief Counsel

Secondary Contact: (717) 731-0444

(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation will replace the existing state intermediate punishment guidelines. The regulations will govern an intensive treatment program for offenders whose crimes were the result of their addiction to or use of alcohol or other drugs. The regulations provide information regarding the evaluation of offenders, the operation of the program, and suspensions and expulsions from the program.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department is acting under the authority granted by section 8 the Act of November 19, 2004 (P.L. 855, No. 112)(42 Pa. C.S.A. §9906).

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## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Department is required to publish regulations within two years of the adoption of the State Intermediate Punishment Guidelines (42 Pa.C.S. § 9906). The State Intermediate Punishment Guidelines were adopted in May, 2005.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Commonwealth's cost of incarcerating offenders continues to increase. Many offenders continue to commit crimes because of their addiction to alcohol or other drugs. State Intermediate Punishment is intended to help offenders break the cycle of addiction and recidivism and become productive, law-abiding members of society. State Intermediate Punishment is based on the concept that the overall costs of incarcerating offenders can be reduced by decreasing the number of repeat offenders. The regulation establishes the parameters for the State Intermediate Punishment Program.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Offenders with unresolved addiction issues will continue to offend, endangering public safety and costing the taxpayers additional money for their incarceration.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Department estimates that it will be able to provide state intermediate punishment for approximately 1000 offenders per year by the time the program is fully operational in 2009. Similar programs in other states have reduced recidivism by an average of approximately 25%. Without this type of treatment, approximately 43% of offenders return to prison within three years of release. A reduction of 43% will be a significant improvement in the recidivism rate. The taxpayers as a whole will receive a triple benefit; a reduction in drug related crime will help make society safer, offenders who become gainfully employed will contribute to the Commonwealth's tax base and the Commonwealth will not incur the costs of housing as many repeat offenders.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The regulation should not affect any group adversely since state intermediate punishment may only be imposed by agreement of the offender, the attorney for the Commonwealth and the sentencing judge.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

As previously noted, the Department anticipates that approximately 1000 offenders will be able to participate in the program when it reaches full capacity. Those offenders will be required to comply with the regulation. Judges, prosecutors and defense counsel in all 67 counties who wish to consider a possible State Intermediate Punishment sentence will also be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulations substantially mirror the existing State Intermediate Punishment Guidelines which were adopted with input from the Pennsylvania Sentencing Commission and the Pennsylvania District Attorneys Association.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no anticipated costs for offenders.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The primary costs to local government will be the costs of transporting eligible offenders to the Department for evaluation. Because the offenders who are most appropriate for the program are individuals who would be receiving state incarceration sentences in any event, the costs of transporting eligible offenders should not exceed the costs that would be incurred without the regulation. Because offenders may be sentenced by videoconferencing and teleconferencing, it will not be necessary for most offenders to be returned to the county for sentencing.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

The costs for the State Intermediate Punishment (SIP) program differ from regular state correctional programming due to shorter SIP sentences and more intensive and costly SIP programming. The larger the number of SIP inmates translates into a larger cost savings for the Department of Corrections (DOC) because the DOC can reduce staffing as its inmate population would begin to decline.

The cost for 1 to 399 inmates in SIP is \$773 per inmate stay. From 400 to 799 inmates, the DOC could close housing units and save \$15,881 per inmate stay. Over 800 inmates may allow the closing of a small institution and save \$27,824 per inmate stay. The current year has no costs because we could absorb the small numbers in current programming.

Although the DOC is showing costs through the first few years of the program, most of this can be made up with programming shifts to target other programming and release monies to this targeted population.

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	0				
Local Government	0	0				
State Government	0	0	4,651,000	7,210,000	7,210,000	7,210,000
<b>Total Savings</b>	0	0	4,651,000	7,210,000	7,210,000	7,210,000
<b>COSTS:</b>						
Regulated Community	0	0				
Local Government	0	0				
State Government	3,030,000	1,308,000				
<b>Total Costs</b>	3,030,000	1,308,000				
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0				
Local Government	0	0				
State Government	0	0				
<b>Total Revenue Losses</b>	0	0				

(20a) Explain how the cost estimates listed above were derived.

The costs were derived by estimating the number of inmates in each phase of the program for every month and the associated costs with each phase. The cost per inmate per day for the first phase (120 days) is \$0 since there is no change, the second phase (150 days) is \$13.00, the third phase (90 days) is \$67.00, the fourth phase (90 days) is \$45.00 and the fifth phase (90 days) is a savings of \$6.60 per day. After this 18 month period, the DOC will save \$23.00 for the next 60 days, \$36.00 for the next 180 days and \$68 for the next 90 days for an inmate population that is up to 400 inmates lower. These numbers will increase to \$56.32, \$69.32 and \$68.00 for a lower inmate population of between 400 and 500 inmates and \$81.00, \$81.00, and \$68.00 for an inmate reduction of over 500 inmates.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
General Govt.	\$31,195,000	\$31,492,000	\$34,195,000	\$36,614,000
Medical Care	\$175,744,000	\$182,270,000	\$189,509,000	\$204,338,000
Education	\$37,432,000	\$42,438,000	\$42,082,000	\$45,555,000
State Corr. Inst.	\$1,086,505,000	\$1,101,381,000	\$1,154,473,000	\$1,313,674,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of the regulation outweigh the costs in that SIP is expected to reduce recidivism which should reduce the Department's inmate population over time. The reduction in inmate population will enable the Department to close a small prison resulting in permanent, long-term cost savings.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The enabling statute requires the promulgation of regulations. There are no nonregulatory alternatives to the regulations. The primary alternative to State Intermediate Punishment overall is to provide intensive drug and alcohol treatment. This is not an entirely adequate alternative because it is much more difficult to provide effective aftercare treatment under the existing laws. Similar programs in other states are effective, possibly because of the immediacy of punishment that follows an offender's failure. It is difficult to immediately punish failure under the existing laws.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The regulations largely track the State Intermediate Punishment legislation. For this reason, alternative regulatory approaches were not considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no applicable federal standards.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

State Intermediate Punishment is an emerging approach to drug and alcohol related offenses. The State Intermediate Punishment Program is similar to programs that have been adopted in the three other states that have tried this approach. The regulations will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will replace the existing State Intermediate Punishment Guidelines as is required by the enabling legislation. (37 Pa. Code Chapter 97) It will not affect other existing or proposed regulations.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No

**Regulatory Analysis Form**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulations are applicable to anyone who commits an eligible offense as defined in the enabling legislation. The legislation requires that the Department develop individual drug and alcohol treatment programs for appropriate offenders. This will enable the Department to meet the particular needs of any offender.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department intends to make the regulation effective upon adoption.

(31) Provide the schedule for continual review of the regulation.

The Department intends to evaluate the State Intermediate Punishment Program annually.



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WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2590

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Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

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\_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

Department of Corrections  
(AGENCY)

BY:   
Andrew C. Clark

\_\_\_\_\_  
DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 19-9

JUN 25 2008

Check if applicable  
Copy not approved. Objections  
checked.

DATE OF ADOPTION: \_\_\_\_\_

BY: 

TITLE: Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

\_\_\_\_\_  
DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel, Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL REGULATION  
DEPARTMENT OF CORRECTIONS  
37 Pa. Code Ch. 97  
State Intermediate Punishment

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REVIEW COMMISSION

# RULES AND REGULATIONS

## DEPARTMENT OF CORRECTIONS

(37 PA. CODE CH. 97)

### State Intermediate Punishment

The Pennsylvania Department of Corrections (Department) amends Title 37 Pennsylvania Code to delete the Guidelines that appear at Chapter 97 and replace them with regulations that will appear at Chapter 97 (relating to state intermediate punishment) to read as set forth in Annex A.

#### *Purpose and Authority*

This final rulemaking adopts regulations governing state intermediate punishment. The new regulations will appear in Chapter 97, adjoining other regulations pertaining to the Department. The Department is acting under the authority granted by section 8 of the Act of November 19, 2004 (P.L. 855, No. 112)(“Act”)(42 Pa.C.S.A. §9906). The Act establishes the Commonwealth’s first state intermediate punishment program. The state intermediate punishment program is intended to reduce recidivism by providing intense drug and alcohol treatment to certain defendants who have been convicted of drug-related offenses. A drug-related offense is a crime that was motivated by the defendant’s consumption of or addiction to alcohol or other drugs.

The Act permits certain defendants who have been convicted of drug-related offenses to be committed to the Department for an assessment of their addiction and other treatment needs. Defendants who are subject to a sentence that includes an enhancement for the use of a deadly weapon or who have been convicted of a personal injury crime and certain other sexual crimes cannot be sentenced to state intermediate punishment. If, after assessment, the Department determines that the defendant is likely to benefit from a drug offender treatment program and is appropriate for placement in such a program, the Department will develop an individualized drug offender treatment program for the defendant. The judge may sentence the defendant to participate in a drug offender treatment program with the agreement of the defendant and the attorney for the Commonwealth.

A drug offender treatment program will be twenty-four months in duration and consist of at least four components. The defendant must serve a minimum of seven months incarceration in a state correctional institution, during which the defendant must receive a minimum of four months treatment in an institutional therapeutic community. The defendant then must receive a minimum of two months treatment in a community-based therapeutic community and a minimum of six months treatment through an outpatient addiction treatment facility. The balance of the twenty-four month program consists of supervised reintegration into the community. The Act permits the Department to transfer the defendant from less restrictive to more restrictive settings for medical, disciplinary or administrative reasons and to suspend or expel the defendant from the program. The Department intends to expel defendants who are not meaningfully

# RULES AND REGULATIONS

participating in their individualized drug offender treatment program. A defendant who is expelled from the program will be resentenced by the court.

## *Comments and Response*

Notice of proposed rulemaking was published at 37 Pa.B. 786 (February 17, 2007) with a thirty (30) day comment period. The Department did not receive any public comments during the thirty (30) day comment period. Comments were received from the Independent Regulatory Review Commission (IRRC) during the comment period.

Following is a summary of the comments and the Department's response to those comments:

*Comment:* IRRC recommended that the definitions of "DOTP-Drug Offender Treatment Program" and "Eligible Offender" fully reflect the statute.

*Response:* The Department adopted both of IRRC's recommendations.

*Comment:* IRRC recommend that the Department remove the following language from § 97.103: "The court is encouraged to order a presentence investigation at or prior to the time the Inmate is committed for evaluation." IRRC noted that the language does not establish a binding norm of general applicability and future effect.

*Response:* The Department removed the language from the regulation.

*Comment:* IRRC commented that Paragraph (b)(6) of § 97.103 requires "A notice of current or previously administered medications." IRRC recommended that the word "or" be replaced with the word "and" to ensure a full history of medications. IRRC also asked that the Department clarify the period for which notice is required. IRRC also recommended that the Department clarify whether the term "medications" included over-the-counter medications.

*Response:* The Department replaced the word "or" with "and." The regulation also has been redrafted to clarify that the Department is seeking a full history of medications, including over-the-counter medications, administered during the preceding calendar year.

*Comment:* IRRC commented that there were several vague phrases in section 97.104 of the regulations. Specifically, IRRC asked, "What 'nationally recognized assessment instrument' does the Department find acceptable?" IRRC also asked, "What procedures will the Department find acceptable to meet the requirement for an instrument to be 'normed and validated on the Department's inmate population?"; "What qualifications does the Department require for a person to be a 'recognized expert in those matters?"; and "What qualifications does the Department accept for 'persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments'?"

*Response:* The Department redrafted the regulations to address the concerns raised in this comment. The regulations reflect that the Department currently uses the Texas Christian University Drug Screen II ("TCUDSII") as its assessment instrument. The TCUDSII was developed under a federal grant and was designed specifically for criminal offenders. The regulations also explain the requirements that any new assessment

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instrument would have to satisfy to be used and the qualifications for administering the instrument. The regulations also require that an individual have attained a Ph.D. or similar terminal degree and have published peer reviewed studies to be considered a “recognized expert.”

The regulations establish the requirements for a person to be skilled in the treatment of drug and alcohol addiction. Specifically, the regulations require that an individual have one year of experience as a Commonwealth Drug and Alcohol Treatment Specialist I or two years of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and have earned a bachelor’s degree that includes 18 credits in the behavioral sciences or one year of paraprofessional and one year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and be certified by the Pennsylvania Chemical Abuse Certification Board as a “Certified Addictions Counselor” or have one year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and a master’s degree with major coursework in addictions, science, psychology or social work or an equivalent combination of experience and training which includes 18 college credits in the behavioral sciences.

The regulations further provide that a person must have completed the Department’s internal training program regarding conducting assessments or have equivalent experience and knowledge to be considered trained to conduct assessments.

*Comment:* IRRC suggested that § 97.104(d) include a cross-reference to 42 Pa.C.S.A. § 9904(f).

*Response:* The Department agrees with this comment and added a cross-reference to the section.

*Comment:* IRRC commented that § 97.113 should clarify the meaning of “other drugs” that will trigger treatment sanctions.

*Response:* The Department added clarifying language to the regulation. The term “other drugs” is intended to encompass both illegal drugs and prescription drugs which have not been prescribed for the offender.

The Department also received informal comments from two judges inquiring whether any administrative remedies were available to a participant who was expelled from an SIP program. The Department has clarified § 97.116 to permit an internal review of an expulsion decision.

## *Final Proposed Rulemaking*

### *Affected Parties*

The regulation affects courts, prosecutors, criminal defendants and defense counsel.

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## *Fiscal Impact and Paperwork Estimates*

The final rulemaking replaces guidelines that implemented a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact. The regulations will be fiscally neutral with respect to the counties. The Department anticipates a savings of \$3,873,000 through the first five years of the program.

The final rulemaking does not affect existing reporting, record keeping, or other paperwork requirements.

## *Effective Date*

The final rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

## *Sunset Date*

No sunset date has been assigned.

## *Contact Person*

The official responsible for information on the final form rulemaking is Randall N. Sears, Deputy Chief Counsel, Pa. Department of Corrections, 55 Utley Drive, Camp Hill, PA 17011.

## *Regulatory Review*

On February 1, 2007, copies of the proposed rulemaking were delivered to IRRC and the Majority and Minority Chairpersons of the House and Senate Judiciary Committees. Notice of the proposed rulemaking was published at 37 Pa.B. 786 (February 17, 2007) with a thirty (30) day public comment period. No public comments were received. Comments were received from IRRC on April 18, 2007. In preparing the final-form rulemaking, the Department considered all comments received from IRRC.

Under section 745.5.a(j.2) of the Regulatory Review Act, this final-form rulemaking was deemed approved by the House and Senate Judiciary Committees on . Under section 745.5a(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on . The Attorney General approved the final-form rulemaking on .

## *Findings*

The Commission finds that:

(1) Public notice of the intention to adopt these regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 - 02) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 - .2.

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(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC and the Senate and House Committees.

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for administration and enforcement of the authorizing statute.

## *Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The Guidelines of the Department of Corrections at 37 Pa. Code Chapter 97 be deleted and the Regulations of the Department of Corrections at 37 Pa. Code Chapter 97 be added to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Commission shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, and the House and the Senate Committees for their review and action as required by law.

(d) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

## **Fiscal Note:**

**Annex A**  
**Chapter 97**  
**State Intermediate Punishment**  
**Drug Offender Treatment Program**

97.101. Authority and purpose.

These regulations are published pursuant to the Act of November 19, 2004, P.L. 855, No. 112 (“Act”) and establish the Drug Offender Treatment Program administered by the Department of Corrections. The regulations are intended to inform judges, prosecutors, defense counsel, defendants and the general public about the Drug Offender Treatment Program. The Drug Offender Treatment Program is a form of state intermediate punishment that provides a sentencing alternative for a person who commits a drug-related offense as defined in the Act. The Drug Offender Treatment Program offers a sentencing alternative that punishes a person who commits a drug-related offense, but also provides treatment that offers the opportunity for the person to address the drug or alcohol addiction or abuse issues related to their criminal behavior.

97.102. Definitions.

The following words and terms, when used in these regulations have the following meanings unless the context clearly indicates otherwise:

**Act** – The Act of November 19, 2004, P.L. 855, No. 112 (42 Pa.C.S.A. §§ 9901-9909) establishing the drug offender treatment program.

**Commission** – the Pennsylvania Commission on Sentencing.

**Community-based therapeutic community** – A long-term residential addiction treatment program licensed by the Department of Health to provide addiction treatment services using a therapeutic community model, determined by the Department of Corrections to be qualified to provide addiction treatment to eligible offenders and accredited as a therapeutic community for the treatment of drug and alcohol abuse and addiction by the Commission on Accreditation of Rehabilitation Facilities or another nationally recognized accreditation organization for community-based therapeutic communities for drug and alcohol treatment.

**Community corrections center** – A residential program that is supervised and operated by the Department of Corrections for inmates with prerelease status or who are on parole.

Court – the trial judge exercising sentencing jurisdiction over an eligible offender under this chapter or the president judge if the original trial judge is no longer serving as a judge of the sentencing court.

Defendant – an individual charged with a drug-related offense.

Department – the Department of Corrections of the Commonwealth.

Drug offender treatment program (“DOTP”) – an individualized treatment program established by the Department consisting primarily of drug and alcohol addiction treatment [, lasting for twenty-four months and including a period of not less than seven months in a state correctional institution, a minimum of four months of which shall be in an institutional therapeutic community; a period of treatment in a community-based therapeutic community of at least two months; a period of at least six months treatment through an outpatient addiction treatment program; and a period of supervised reintegration into the community] THAT SATISFIES THE TERMS AND CONDITIONS LISTED IN 42 PA.C.S.A. § 9905 (RELATING TO DRUG OFFENDER TREATMENT PROGRAM).

Drug-related offense – a criminal offense for which the defendant is convicted and that the court determines was motivated by the defendant’s consumption of or addiction to alcohol or a controlled substance, counterfeit, designer drug, drug, immediate precursor or marijuana, as those terms are defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

Eligible Offender – SUBJECT TO 42 PA.C.S.A. § 9721 (A.1)(RELATING TO SENTENCING GENERALLY), a defendant designated by the sentencing court as a person convicted of a drug-related offense who: (1) has undergone an assessment performed by the Department which assessment has concluded that the defendant is in need of drug and alcohol addiction treatment and would benefit from commitment to a drug offender treatment program and that placement in a drug offender treatment program would be appropriate; (2) does not demonstrate a history of present or past violent behavior; (3) would be placed in the custody of the Department if not sentenced to state intermediate punishment; and (4) provides written consent permitting the release of information pertaining to the defendant’s participation in a drug offender treatment program. The term shall not include a defendant who is subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon, as defined pursuant to law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing, or a defendant who has been convicted of a personal injury crime as defined in section 103 of the Crime Victims Act, or an attempt or conspiracy to commit such a crime or who has been convicted of violating 18 Pa.C.S. § 4302



(relating to incest), 5901 (relating to open lewdness), 6312 (relating to abuse of children), 6318 (relating to unlawful contact with minor); 6320 (relating to sexual exploitation of children) or Chapter 76 Subchapter C (relating to internet child pornography).

Expulsion – the permanent removal of a participant from a drug offender treatment program.

Group home – a residential program that is contracted out by the Department to a private service provider for inmates with prerelease status or who are on parole.

Individualized drug offender treatment plan – an individualized addiction treatment plan within the framework of the drug offender treatment program.

Institutional therapeutic community – a residential drug treatment program in a state correctional institution, accredited as a therapeutic community for treatment of drug and alcohol abuse and addiction by the American Correctional Association or other nationally recognized accreditation organization for therapeutic community drug and alcohol addiction treatment.

Outpatient addiction treatment facility – an addiction treatment facility licensed by the Department of Health and designated by the Department of Corrections as qualified to provide addiction treatment to criminal justice offenders.

Participant – an eligible offender actually sentenced to state intermediate punishment pursuant to 42 Pa.C.S. § 9721(a)(7) (relating to sentencing generally).

Transitional residence – a residence investigated and approved by the Department as appropriate for housing a participant in a drug offender treatment program.

#### 97.103. Commitment for assessment.

(a) Prior to imposing sentence, the court may, upon motion of the Commonwealth and agreement of the defendant, commit a defendant to the custody of the Department for the purpose of evaluating whether the defendant would benefit from a DOTP and whether placement in a DOTP is appropriate. [The court is encouraged to order a pre-sentence investigation at or prior to the time the inmate is committed for evaluation.]

(b) The committing county shall deliver a defendant committed to the custody of the Department for purposes of an evaluation to the institution the Department has designated for reception of inmates from that county. The defendant shall be housed in a state correctional institution while undergoing the

evaluation. The documents listed below shall be delivered to the Department simultaneously with the defendant's arrival. The Department may refuse to accept for evaluation a defendant who is delivered to the Department by the county without all the documents listed below:

(1) A certified copy of the order committing the defendant to the Department's custody for purposes of an evaluation.

(2) A summary of the offense for which the inmate has been convicted, including the criminal complaint and police report summarizing the facts of the crime, if available or a copy of the affidavit of probable cause accompanying the arrest warrant.

(3) A record of the defendant's adjustment in the county correctional facility, including, but not limited to, misconducts and escape history.

(4) Any current medical or psychological condition requiring treatment, including, but not limited to suicide attempts.

(5) Any medical admission testing performed by the county and the results of those tests, including, but not limited to, hepatitis, HIV/AIDS, tuberculosis or other infectious disease testing.

(6) A notice of current [or] AND previously administered medications. THE NOTICE MUST INCLUDE THE NAME AND DOSAGE OF ALL MEDICATIONS PROVIDED TO THE INMATE WHILE INCARCERATED IN THE COUNTY AS WELL AS ANY OVER-THE-COUNTER MEDICATIONS USED BY THE INMATE AND KNOWN TO THE COUNTY. THE NOTICE SHALL LIST MEDICATIONS PROVIDED OR USED DURING THE PRECEDING CALENDAR YEAR.

(7) A forty-eight hour supply of current medications.

(c) Within seven days of delivery of the defendant to the Department for an evaluation, the committing county shall provide the Department with the following:

(1) A summary of the disposition of all arrests noted on the defendant's record of arrest and prosecution (RAP Sheet).

(2) Any available information regarding the defendant's history of drug or alcohol abuse, addiction or treatment, including any evaluation performed using

Court Reporting Network instruments or other evaluation techniques deemed appropriate by the court under 75 Pa.C.S. § 3816 or any other provision of law.

(3) A pre-sentence investigation when available or if a pre-sentence investigation cannot be completed, the official version of the crime for which the offender was convicted or a copy of the guilty plea transcript or a copy of the preliminary hearing transcript.

(4) A copy of the guideline sentence form issued by the Commission.

(5) Any other information the court deems relevant to assist the Department with its assessment of the defendant.

97.104. Assessment of addiction and other treatment needs.

(a)(1) The Department shall conduct a risk assessment and assess the addiction and other treatment needs of a defendant committed to its custody for purposes of an evaluation. The assessment of addiction shall be conducted using a nationally recognized assessment instrument or an instrument that has been normed and validated on the Department's inmate population by a recognized expert in such matters. [The instrument will be administered by persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments. The assessment will be reviewed and approved by a supervisor with at least three years of experience providing drug and alcohol counseling services.]

(2) FOR PURPOSES OF THIS SECTION THE TERM "RECOGNIZED EXPERT" SHALL MEAN AN INDIVIDUAL WHO HAS EARNED THE DOCTOR OF PHILOSOPHY OR THE SIMILAR TERMINAL DEGREE IN HIS OR HER FIELD OF STUDY AND WHO HAS PUBLISHED A NUMBER OF PEER REVIEWED VALIDATION STUDIES.

(3) THE DEPARTMENT CURRENTLY USES THE TEXAS CHRISTIAN UNIVERSITY DRUG SCREEN II, AN INSTRUMENT THAT WAS DEVELOPED UNDER A FEDERAL GRANT SPECIFICALLY FOR CRIMINAL OFFENDERS, IS CONSISTENT WITH THE DSM-IV CRITERIA FOR SUBSTANCE ABUSE/DEPENDENCE AND IS USED BY A NUMBER OF CRIMINAL JUSTICE AGENCIES. THE DEPARTMENT'S CRITERIA FOR SELECTING AN ASSESSMENT INSTRUMENT ARE THAT:

(I) THE INSTRUMENT BE SUPPORTED BY STRONG ACADEMIC RESEARCH;

(II) THE INSTRUMENT CORRESPOND WITH THE THEN CURRENT DSM CRITERIA FOR SUBSTANCE ABUSE OR ADDICTION OR BOTH; AND

(III) WHEN POSSIBLE, THE INSTRUMENT PRODUCE RESULTS THAT ARE STATISTICALLY AS RELIABLE AS RESULTS PRODUCED BY THE TEXAS CHRISTIAN UNIVERSITY DRUG SCREEN II.

(4) THE INSTRUMENT WILL BE ADMINISTERED BY PERSONS SKILLED IN THE TREATMENT OF DRUG AND ALCOHOL ADDICTION AND TRAINED TO CONDUCT ASSESSMENTS. THE ASSESSMENT WILL BE REVIEWED AND APPROVED BY A SUPERVISOR WITH AT LEAST THREE YEARS OF EXPERIENCE PROVIDING DRUG AND ALCOHOL COUNSELING SERVICES. AN INDIVIDUAL WILL BE CONSIDERED SKILLED IN THE TREATMENT OF DRUG AND ALCOHOL ADDICTION IF THEY HAVE ONE YEAR OF EXPERIENCE AS A COMMONWEALTH DRUG AND ALCOHOL TREATMENT SPECIALIST 1 OR TWO YEARS OF PROFESSIONAL EXPERIENCE PROVIDING DRUG AND ALCOHOL COUNSELING SERVICES DIRECTLY TO CLIENTS IN A SOCIAL WORK SETTING AND HAVE EARNED A BACHELOR'S DEGREE THAT INCLUDES 18 CREDITS IN THE BEHAVIORAL SCIENCES OR ONE YEAR OF PARA-PROFESSIONAL AND ONE YEAR OF PROFESSIONAL EXPERIENCE PROVIDING DRUG AND ALCOHOL COUNSELING SERVICES DIRECTLY TO CLIENTS IN A SOCIAL WORK SETTING AND ARE CERTIFIED BY THE PENNSYLVANIA CHEMICAL ABUSE CERTIFICATION BOARD AS A "CERTIFIED ADDICTIONS COUNSELOR" OR ONE YEAR OF PROFESSIONAL EXPERIENCE PROVIDING DRUG AND ALCOHOL COUNSELING SERVICES DIRECTLY TO CLIENTS IN A SOCIAL WORK SETTING AND A MASTER'S DEGREE WITH MAJOR COURSEWORK IN ADDICTIONS SCIENCE, PSYCHOLOGY OR SOCIAL WORK OR AN EQUIVALENT COMBINATION OF EXPERIENCE AND TRAINING WHICH INCLUDES 18 COLLEGE CREDITS IN THE BEHAVIORAL SCIENCES. AN INDIVIDUAL WILL BE CONSIDERED TRAINED TO CONDUCT ASSESSMENTS IF THEY HAVE COMPLETED THE DEPARTMENT'S INTERNAL TRAINING PROGRAM IN PERFORMING ASSESSMENTS OR HAVE EQUIVALENT EXPERIENCE AND KNOWLEDGE.

(b) The Department will provide a report of its assessment to the court, the defendant, the attorney for the Commonwealth and the Sentencing Commission within 60 days of the commitment of the defendant to the Department for purposes of evaluation. If the Department determines that the defendant will benefit from a DOTP and placement in a DOTP is appropriate, the report will include a proposed DOTP detailing the type of treatment proposed for the defendant. If the

Department determines that the defendant will not benefit from a DOTP or that placement in a DOTP is inappropriate, the report will set forth the reasons for the Department's determination.

(c) The Department encourages resolution of as many unresolved charges against the defendant as possible prior to his or her commitment for an evaluation. Resolution of unresolved charges, including arrests that appear on a defendant's RAP sheet for which a disposition is not noted, assists the Department in completing an evaluation in a timely fashion. The Department will reconsider its report if the defendant has been deemed inappropriate for a DOTP because of unresolved charges or because the disposition of all arrests on the defendant's RAP sheet is not known and the committing county provides the Department with the resolution of the charges or disposition of the arrests.

(d) The Act provides that the court may not modify or alter the terms of the Department's proposed DOTP without the agreement of the Department and attorney for the Commonwealth. (42 PA.C.S.A. § 9904(F)) A request for modification of the terms of a proposed DOTP shall be sent to the Deputy Superintendent for the Diagnostic and Classification Center at the State Correctional Institution at Camp Hill for male inmates and the Deputy Superintendent for Centralized Services at the State Correctional Institution at Muncy for female inmates.

[(d)](E) The sheriff or his or her agent shall return to the committing county a defendant whom the Department determines will not benefit from a DOTP or is inappropriate for placement in a DOTP within 60 days of the Department's determination.

#### 97.105. Drug Offender Treatment Program Selection Committee

(a) The Participant Selection Committee shall consist of the Diagnostic and Classification Center Director or his or her designee, the Deputy Superintendent responsible for the Diagnostic and Classification Center or his or her designee, and the Chief of the Department's Central Office Treatment Division or his or her designee.

(b) The Participant Selection Committee shall apply the participant selection criteria to determine whether a defendant will benefit from a DOTP and whether his or her placement in a DOTP is appropriate.

## 97.106. Participant Selection Criteria

(a) An eligible offender, as that term is defined in the Act, may be selected to be a participant in a DOTP. The Participant Selection Committee will consider all information relevant to determining which defendants are most likely to benefit from a DOTP by becoming productive, law-abiding members of society by addressing their abuse of or addiction to alcohol or other drugs. Selection criteria will include, but not necessarily be limited to, the following:

(1) Information furnished to the Department by the sentencing court.

(2) The results of the assessment of addiction and other treatment needs conducted by the Department.

(3) The length of the sentence that would be typically imposed under the standard range of the sentencing guidelines promulgated by the Pennsylvania Commission of Sentencing.

(4) The eligible offender's motivation to participate meaningfully in a DOTP.

(5) Whether the eligible offender has provided to the Department written consent permitting the release of information pertaining to his or her participation in a DOTP.

(6) The eligible offender's criminal history.

(7) The eligible offender's escape or parole absconder history.

(8) The eligible offender's institutional adjustment during current and prior incarcerations.

(9) The availability of the Department's programming resources.

(b) No eligible offender shall have a right to placement in a DOTP. A DOTP is intended to assist defendants to become productive, law-abiding members of society and is not intended to be a means for a defendant simply to serve a shorter sentence. The goal of the Participant Selection Committee will be to select those defendants it believes will most likely benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively. The number of participants selected for a DOTP will be the number that the

Participant Selection Committee believes will neither under use nor overtax the available programming resources.

97.107. Drug offender treatment program.

(a) A DOTP developed for a defendant shall be designed to address the defendant's individually assessed drug and alcohol abuse and addiction needs and other issues essential to the defendant's successful reintegration into the community, including, but not limited to, education and employment issues.

(b) A DOTP developed for a defendant shall be twenty-four months in duration and shall include the following:

(1) A period of confinement in a state correctional institution of not less than seven months, including the assessment period prior to the imposition of sentence and a period of at least four months during which the defendant shall be placed in an institutional therapeutic community.

(2) A period of treatment in a community-based therapeutic community of at least two months.

(3) A period of at least six months treatment through an outpatient addiction treatment facility.

(4) A period of supervised reintegration into the community for the balance of the DOTP.

97.108. Confinement in a state correctional institution.

(a) The Department will accommodate requests to conduct sentencing proceedings for persons committed to its custody via videoconferencing or teleconferencing subject to equipment and staff availability. A defendant who is not sentenced via videoconferencing or teleconferencing, but is sentenced to a DOTP following an evaluation and recommendation by the Department, shall be delivered to the institution the Department has designated for reception of inmates from the committing county. The defendant will be considered to be a participant upon receipt by the Department.

(b) The participant will be required to begin his or her individual DOTP while housed in a state correctional institution and may be required to begin additional programming intended to address other treatment needs identified during his or her incarceration.

97.109. Program advancement and regression.

(a) An individual DOTP contemplates that a participant will advance through treatment provided in progressively less restrictive treatment settings. The Department anticipates that some participants who have progressed to a less restrictive treatment setting will benefit from an additional period of treatment or confinement in a more restrictive setting or location. Consistent with the minimum time requirements set forth in the Act, the Department may, in its discretion, transfer a participant to a state correctional institution, an institutional therapeutic community, a community-based therapeutic community, an outpatient addiction treatment program or an approved transitional residence. The Department may transfer a participant between less restrictive and more restrictive settings based upon the participant's progress or regression in treatment or for medical, disciplinary or other administrative reasons.

(b) The Chief of the Department's Central Office Treatment Division or his or her designee will determine whether a participant will be transferred to a different setting or location. The Department's goal will be to take the action that it believes will maximize the use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively.

97.110. Community-based therapeutic community.

(a) A participant who successfully completes the institutional therapeutic community portion of his or her DOTP and any required additional programming will be placed in a community-based therapeutic community. Placement in a community-based therapeutic community will not necessarily be made immediately upon successful completion of the institutional therapeutic community and any additional required programming, but will be made in sufficient time to permit the participant to complete the remaining portions of his or her DOTP.

(b) The participant will be required to continue engaging in his or her individual DOTP while housed in a community-based therapeutic community and may be required to participate in additional programming intended to address other treatment needs identified during his or her incarceration.

(c) The treatment staff of the community-based therapeutic community shall provide the Department with an informational report concerning the participant's progress toward completion of the community-based treatment



portion of his or her DOTP at the conclusion of the participant's first two months in the community-based therapeutic community. The report shall include a recommendation whether the participant has progressed sufficiently to begin the outpatient addiction treatment portion of his or her DOTP, if the participant should continue in the community-based treatment community, be returned to the institutional therapeutic community or to a state correctional institution or be expelled from the DOTP. The report shall include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted. The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or his or her designee.

(d) The Department shall not be limited to approving or disapproving the recommendation of the community-based therapeutic treatment community treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the community-based therapeutic community to submit reports in addition to the report required by paragraph (c).

#### 97.111. Outpatient addiction treatment facility.

(a) A participant who successfully completes the community-based therapeutic community and any additional required programming will be assigned to an outpatient addiction treatment facility. Assignment to an outpatient addiction treatment facility will not necessarily be made immediately upon successful completion of the community-based therapeutic community and any additional required programming, but will be made in sufficient time to permit the participant to complete the remaining portions of his or her DOTP. A participant may reside in a community corrections center, group home or an approved transitional residence while assigned to an outpatient addiction treatment facility program, but will not be permitted to begin residing in a group home or an approved transitional residence until the Department has completed its investigation, review and approval of such residence.

(b) A participant will be required to continue his or her individual DOTP while assigned to an outpatient addiction treatment facility program and may be required to participate in additional programming intended to address other treatment needs identified during his or her incarceration.

(c) The treatment staff of the outpatient addiction treatment facility shall provide the Department with an informational report concerning the participant's

progress toward completion of the outpatient addiction treatment portion of his or her DOTP at the conclusion of the participant's first six months of treatment with the outpatient addiction treatment facility. The report shall include a recommendation whether the participant has progressed sufficiently to begin his or her supervised reintegration into the community, if the participant should continue treatment with the outpatient addiction treatment facility, be returned to a community-based treatment community, institutional therapeutic community or to a state correctional institution or be expelled from the DOTP. The report shall include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted. The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or his or her designee.

(d) The Department shall not be limited to approving or disapproving the recommendation of the outpatient addiction treatment facility treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the outpatient addiction treatment program to submit reports in addition to the report required by paragraph (c).

#### 97.112. Supervised reintegration into the community.

(a) A participant who successfully completes treatment through an outpatient addiction treatment facility and any additional required programming will begin supervised reintegration into the community for the remaining portion of his or her DOTP. The participant may continue or be permitted to begin to reside in a community corrections center, group home or an approved transitional residence during the period of supervised reintegration into the community, but will not be permitted to begin residing in an approved transitional residence until the Department has completed its investigation, review and approval of such residence.

(b) A participant residing in an approved transitional residence will be supervised by the Department during the remainder of his or her DOTP. The participant will be required to comply with any conditions imposed by the Department while residing in an approved transitional residence including abstaining from the use of alcohol or other drugs, submitting urine, hair or other samples the Department requests to monitor the participant's use of alcohol or other drugs and engaging in additional treatment or programming required by the Department.

(c) A participant will continue to be subject to the treatment and disciplinary sanctions set forth in sections 97.113 and 97.114 of these guidelines while residing in an approved transitional residence.

(d) The Department will notify the sentencing court, the attorney for the Commonwealth and the Commission when the participant successfully completes the DOTP.

#### 97.113. Treatment sanctions.

(a) A participant who tests positive for the use of alcohol or other drugs shall receive a hearing according to the procedures set forth in the Department's inmate disciplinary policy. If the hearing examiner or community corrections hearing committee, as applicable, determines that the participant used alcohol or other drugs, the participant shall be subject to the following sanctions:

(1) A participant housed in a state correctional institution or institutional therapeutic community shall be expelled from the DOTP and housed as the Department deems appropriate pending further action by the sentencing court.

(2) A participant receiving treatment through a community-based therapeutic community, outpatient addiction treatment facility or during supervised reintegration to society shall be evaluated by the Department. The participant shall be housed as the Department deems appropriate pending completion of the evaluation. Following the evaluation, the participant may be placed in the treatment setting deemed appropriate by the Chief of the Department's Central Office Treatment Division or his or her designee or suspended or expelled from the DOTP.

(b) Subject to the time limitations set forth in the Act, a participant who requests assistance because he or she believes they are in danger of relapsing will be given the opportunity to receive treatment in a more restrictive treatment setting as deemed appropriate by the Chief of the Department's Central Office Treatment Division or his or her designee.

(C) FOR PURPOSES OF THIS SECTION, THE TERM "OTHER DRUGS" SHALL MEAN A CONTROLLED SUBSTANCE, COUNTERFEIT, DESIGNER DRUG, DRUG, IMMEDIATE PRECURSOR OR MARIHUANA AS THOSE TERMS ARE DEFINED IN THE ACT OF APRIL 14, 1972 (P.L. 233, NO. 64), KNOWN AS "THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT" OR ANY PRESCRIPTION DRUG THAT HAS NOT BEEN PRESCRIBED FOR THE INDIVIDUAL USING THE PRESCRIPTION DRUG.

97.114. Disciplinary sanctions.

(a) A participant who is alleged to have violated the Department's disciplinary rules, shall receive a hearing according to the procedures set forth in the Department's inmate disciplinary policy.

(b) If the hearing examiner or community corrections hearing committee, as applicable, determines that the participant committed a Class 1 or Class 2 misconduct, the Chief of the Department's Central Office Treatment Division or his or her designee will determine whether the participant will be suspended or expelled from the DOTP, sanctioned according to the Department's inmate disciplinary policy or be subject to other sanctions deemed appropriate.

97.115. Suspension from a DOTP.

(a) A participant who violates the conditions of his or her DOTP, other than by testing positive for the use of alcohol or other drugs or by committing a violation of the Department's disciplinary rules, may be suspended from participation in a DOTP.

(b) The Department's goal in determining whether to suspend a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after a period of suspension.

(c) The Chief of the Department's Central Office Treatment Division or his or her designee will be responsible for determining whether to suspend a participant from a DOTP. The determination whether to suspend a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division or his or her designee.

(d) A participant who is suspended from participation in a DOTP will be housed in the setting deemed appropriate by the Chief of the Department's Central Office Treatment Division or his or her designee and must comply with the Department's rules and any conditions imposed during the period of suspension. The Chief of the Department's Central Office Treatment Division or his or her designee will determine the participant's program status upon completion of the suspension.

97.116. Expulsion from a DOTP.

(a) In addition to the provisions of sections 97.113 and 97.114, a participant who violates the conditions of his or her DOTP or who is not constructively participating in his or her DOTP or who will be unable to complete his or her DOTP within the period remaining on his or her 24 months sentence may be expelled from participation in a DOTP.

(b) The Department's goal in determining whether to expel a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after being subject to sanctions or a period of suspension or both.

(c) The Chief of the Department's Central Office Treatment Division or his or her designee will be responsible for determining whether to expel a participant from a DOTP. The determination whether to expel a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division or his or her designee.

(d) A PARTICIPANT WHO HAS BEEN EXPELLED FROM A DOTP MAY FILE A GRIEVANCE WITH THE DEPUTY SECRETARY FOR REENTRY AND SPECIALIZED PROGRAMS WITHIN 10 CALENDAR DAYS OF THE DATE OF THE EXPULSION.

(I) THE GRIEVANCE MUST BE LEGIBLE AND THE STATEMENT OF FACTS MAY NOT EXCEED TWO PAGES.

(II) A PARTICIPANT IS RESPONSIBLE FOR INCLUDING ALL REQUIRED DOCUMENTATION WITH THE GRIEVANCE. FAILURE TO PROVIDE RELEVANT DOCUMENTATION MAY RESULT IN THE GRIEVANCE BEING DISMISSED.

(III) A PARTICIPANT WHO IS INDIGENT AS DEFINED IN DEPARTMENT POLICY DC-ADM 803, "INMATE MAIL AND INCOMING PUBLICATIONS," WILL BE AFFORDED COPY SERVICE AND LEGAL POSTAGE UP TO A MAXIMUM OF \$10.00 PER MONTH AND ALL MONIES RECEIVED IN THE INMATE'S ACCOUNT SHALL BE USED TO PAY FOR THE COST OF THE COPIES AND LEGAL POSTAGE. A NON-INDIGENT INMATE WILL INCUR COPYING CHARGES IN ACCORDANCE WITH DEPARTMENT POLICY 3.1.1, "FISCAL ADMINISTRATION."

(IV) DOCUMENTS SUBMITTED IN SUPPORT OF A GRIEVANCE WILL NOT BE RETURNED. THE PARTICIPANT SHOULD

MAKE COPIES OF SUPPORTING DOCUMENTS FOR SUBMISSION TO FINAL REVIEW.

(V) THE DEPUTY SECRETARY FOR REENTRY AND SPECIALIZED PROGRAMS MAY DECIDE THE GRIEVANCE BASED UPON THE DOCUMENTATION PRESENTED AS WELL AS ANY OTHER INFORMATION CONTAINED WITHIN THE DEPARTMENT'S FILES AND MAY INTERVIEW THE INMATE AND ANY INVOLVED STAFF MEMBER OR CONTRACTOR EMPLOYEE VIA VIDEOCONFERENCING IF THE DEPUTY SECRETARY FOR REENTRY AND SPECIALIZED PROGRAMS, IN HIS OR HER SOLE DISCRETION, BELIEVES AN INTERVIEW WILL ASSIST HIM OR HER IN UNDERSTANDING AND EVALUATING THE GRIEVANCE.

(VI) IN REVIEWING A GRIEVANCE, THE DEPUTY SECRETARY FOR REENTRY AND SPECIALIZED PROGRAMS SHALL DETERMINE WHETHER THE PARTICIPANT VIOLATED THE CONDITIONS OF HIS OR HER DOTP OR WAS MEANINGFULLY PARTICIPATING IN THE DOTP. THE DEPUTY SECRETARY FOR REENTRY AND SPECIALIZED PROGRAMS MAY UPHOLD OR REVERSE THE EXPULSION OR TAKE ANY OTHER ACTION THAT COULD HAVE BEEN TAKEN BY THE CHIEF OF THE DEPARTMENT'S CENTRAL OFFICE TREATMENT DIVISION WITH RESPECT TO THE ALLEGED CONDUCT AT ISSUE.

(E) The Department will promptly notify the sentencing court, the participant, the attorney for the Commonwealth and the Commission of the expulsion of a participant from a DOTP and of the reason for such expulsion. The inmate will be housed in a state correctional institution or county prison pending action by the court.

Section 97.117. Consent to disclosure of information.

The consent to disclosure of information shall be in the following form:

#### **CONSENT**

I, the undersigned, hereby give my consent for the Commonwealth of Pennsylvania Department of Corrections, its officers, employees, volunteers, contractors and agents to release and disclose to any court, attorney for the Commonwealth, the Pennsylvania Commission on Sentencing and to my attorney information pertaining to my evaluation for and participation in a drug offender treatment program. This consent to release and disclosure includes medical and

dental information, mental health treatment information, drug and alcohol treatment information, criminal history records information and any other information contained in records maintained by the Department of Corrections, its officers, employees, volunteers, contractors and agents. This consent to release and disclosure extends to records pertaining to any period during which I am or was committed to the custody of the Department of Corrections and shall not expire.

Disclosure of medical/dental information may pertain to all aspects of my treatment and hospitalization, including psychological and psychiatric information and drug and/or alcohol information.

Disclosure of mental health records pertains to treatment, hospitalization, and/or outpatient care provided to me for the period listed above. I understand that my record may contain information regarding all aspects of my mental health treatment and hospitalization, including psychological and psychiatric information, drug and/or alcohol information.

In authorizing this disclosure, I expressly waive any and all rights I may have to the confidential maintenance of these records, including any such rights that exist under local, state, and federal statutory and/or constitutional law, rule or order, including those contained in the Pennsylvania Mental Health Procedures Act of 1976 and the Pennsylvania Drug and Alcohol Abuse Control Act of 1972.

I understand that I have no obligation to authorize disclosure of any information from my record and that I may revoke this consent, except to the extent that action has already been taken, at any time by notifying in writing the Medical Records Technician, Health Care Administrator, or Facility Manager. I also understand that revocation of this consent will result in my being expelled from the drug offender treatment program and that I will be resentenced by the court.

I understand that these records are the property of the Department of Corrections and that my authorization for their release does not require the Department of Corrections to release these records.

Furthermore, I will indemnify and hold harmless the Pennsylvania Department of Corrections, and its officers, employees, volunteers, contractors and agents, for any losses, costs, damages, or expenses incurred because of releasing information in accordance with this authorization.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

97.118. Applicability.

The regulations shall apply to any defendant sentenced to state intermediate punishment on or after their publication as final regulations in the Pennsylvania Bulletin.





PENNSYLVANIA DEPARTMENT OF CORRECTIONS  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
55 UTLEY DRIVE  
CAMP HILL, PENNSYLVANIA 17011  
(717) 731-0444

July 25, 2008

Kim Kauffman, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown 2  
333 Market Street  
Harrisburg, PA 17101

Re: State Intermediate Punishment Regulations  
37 Pa. Code Ch. 97

RECEIVED  
2008 JUL 25 PM 12:39  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Mr. Kauffman:

I am pleased to resubmit for your review and approval the Pennsylvania Department of Corrections' final form State Intermediate Punishment Regulations. The regulations are promulgated under the authority of Section 8 of the Act of November 19, 2004 (P.L. 855, No. 112)(42 Pa.C.S.A. § 9906("Act")). The only modification from our previous submittal is that Annex A has been reformatted to comply with the requirements of the Independent Regulatory Review Commission.

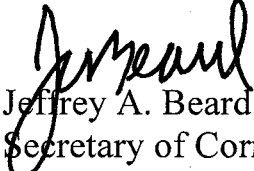
The regulations will amend Chapter 97 of Title 37 of the Pennsylvania Code by replacing the existing State Intermediate Punishment Guidelines with regulations. The regulations are substantially similar to the existing Guidelines which seem to have been well received by the judiciary, prosecution and defense counsel. In fact, the Department received no public comments regarding the regulations when published in proposed form. The Department addressed all comments received from the Independent Regulatory Review Commission and added an appeal process at the suggestion of two judges. The Department appreciated the suggestions and found them helpful.

The Department does not expect the regulations to have any significant negative fiscal impact on the Commonwealth, its political subdivisions or the public. As explained in the Preamble, the Department believes the regulations will reduce overall costs to the Commonwealth. The regulations have been drafted to

use documentation that counties are required to prepare in criminal case and, therefore, do not impose any significant increased paperwork requirements on the judiciary or the counties.

I am available at your convenience to answer any questions or concerns that you or any of the members of the Judiciary Committee may have regarding the regulations.

Very truly yours,

  
Jeffrey A. Beard, Ph.D.  
Secretary of Corrections

RNS

C: John Coyne, Director, Office of Legislative Affairs  
Andrew Clark, Deputy General Counsel  
Suzanne Hueston, Chief Counsel  
Glenda Davidson, Office of General Counsel  
Randall N. Sears, Deputy Chief Counsel  
File (CC-219)

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**ID. NUMBER:** 19-9  
**SUBJECT:** STATE INTERMEDIATE PUNISHMENT  
**AGENCY:** DEPARTMENT OF CORRECTIONS

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2008 JUL 25 PM 12:39

RECEIVED

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>7/25/08</u>	<u>Patricia Tamayo</u>	HOUSE COMMITTEE ON JUDICIARY
		MAJORITY CHAIRMAN <u>Thomas R. Caltagirone</u>
<u>7/25</u>	<u>Anna Squignoli</u>	SENATE COMMITTEE ON JUDICIARY
<u>7/25</u>	<u>Anne Griffin Gray</u>	MAJORITY CHAIRMAN <u>Stewart J. Greenleaf</u>
<u>7/25/08</u>	<u>Cheryl John</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)