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| Regulatory Analysis Form | | This space for use by IRRC RECEIVED |
| (1) Agency Department of Corrections | | 2007 FEB -1 AM 11:11 INDEPENDENT REGULATORY REVIEW COMMISSION |
| (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 Randall N. Sears, Deputy Chief Counsel (717) 731-0444 | |
| (6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted | | (7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> 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 of the Act of November 19, 2004 (P.L. 855, No. 112)(42 Pa.C.S.A. §9906). | | |

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(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.A. § 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 at least 25%. Without this type of treatment, approximately 43% of offenders return to prison within three years of release. A reduction of 25 % 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 upon recommendation of the Department of Corrections and 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 because the Department can reduce staffing as its inmate population begins to decline. The cost for 1 to 399 inmates in SIP is \$773 per inmate stay. From 400 to 799 inmates, the Department 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 the Department can absorb the small numbers in current programming. Although the Department 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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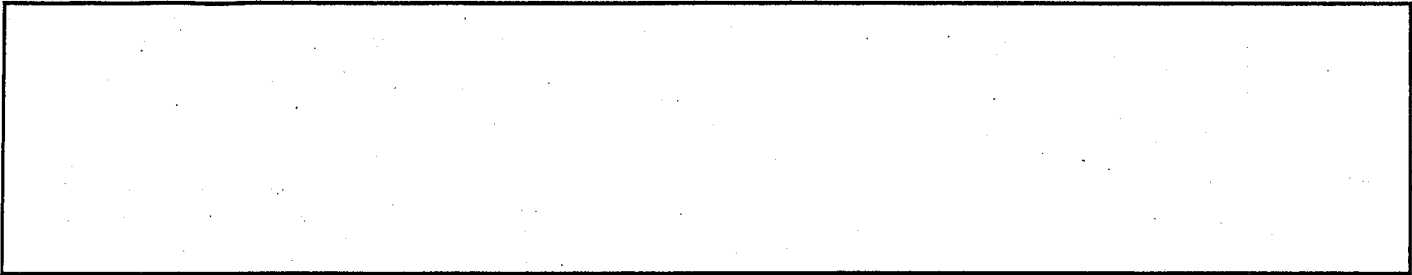
(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|-----------------------------|-----------------------|------------------|------------------|------------------|------------------|------------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | 0 | 0 | | | | |
| Local Government | 0 | 0 | | | | |
| State Government | 0 | 0 | | | 2,180,153 | 5,452,539 |
| Medical | | | | | 152,611 | 386,678 |
| SCI | | | | | 2,027,542 | 5,070,861 |
| Total Savings | 0 | 0 | | | 2,180,153 | 5,452,539 |
| COSTS: | | | | | | |
| Regulated Community | 0 | 0 | | | | |
| Local Government | 0 | 0 | | | | |
| State Government | 0 | 1,594,274 | 4,375,118 | 3,248,007 | | |
| Medical | | 0 | 0 | 0 | | |
| SCI | | 1,594,274 | 4,375,118 | 3,248,007 | | |
| Total Costs | 0 | 1,594,274 | 4,375,118 | 3,248,007 | | |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | 0 | 0 | | | | |
| Local Government | 0 | 0 | | | | |
| State Government | 0 | 0 | | | | |
| Total Revenue Losses | 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 \$12.09, the third phase (90 days) is \$81.25, the fourth phase (90 days) is \$60.65 and the fifth phase (90 days) is a savings of \$5.35 per day. After this 18 month period, the Department will save \$21.75 for the next 60 days, \$33.84 for the next 180 days and \$66 for the next 90 days for an inmate population that is up to 400 inmates lower. These numbers will increase to \$54.15, 66.24 and \$66 for a lower inmate population of between 400 and 500 inmates and \$77.96, \$89.45, and \$66 for an inmate reduction of over 500 inmates.

All of the cost increase is associated with additional treatment programs and the costs are in the State Correctional Institutions appropriation. A small percentage of the savings will be achieved in the Medical Care appropriation when the entire per diem for an inmate can be eliminated and the cost of pharmacy and health care per diem costs in the DOC contracts can be saved. The two appropriation lines are shown separately and added together above and should not be double counted.



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

| Program | FY-3 | FY-2 | FY-1 | Current FY |
|-------------------|-----------------|-----------------|-----------------|-----------------|
| Medical Care | \$152,249,000 | \$171,681,000 | \$175,744,000 | \$189,194,000 |
| State Corr. Inst. | \$1,028,246,000 | \$1,055,589,000 | \$1,086,505,000 | \$1,129,017,000 |
| | | | | |
| | | | | |

(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.

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(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 regulations must be adopted by May 2007. The Department intends to make the regulations effective by April 30, 2007.

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

The Department will be providing a biannual report to the General Assembly and intends to evaluate the State Intermediate Punishment Program annually.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

Amy M. Elliott

(DEPUTY ATTORNEY GENERAL)

OCT 10 2006

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

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

Department of Corrections

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 19-9

DATE OF ADOPTION: Secretary

BY: _____

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

Andrew C. Clark

BY: Andrew C. Clark

SEP 25 2006

DATE OF APPROVAL

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

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

DEPARTMENT OF CORRECTIONS
37 Pa. Code Chapter 97
State Intermediate Punishment
Proposed Regulations

The Department of Corrections (Department) gives public notice of its intention to adopt regulations governing state intermediate punishment. The regulations will appear in Title 37 Pennsylvania Code, Chapter 97, relating to state intermediate punishment, to read as set forth in Annex A.

Statutory Authority

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).

Purpose and Background

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

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Act required the Department to develop written State Intermediate Punishment Guidelines. The Guidelines were not subject to the Regulatory Review Act (71 P.S. § 745.1) and were published in the Pennsylvania Bulletin on May 25, 2005. The Guidelines are effective for two years following publication and must be replaced by regulations promulgated consistently with the Regulatory Review Act within the two year period. (42 Pa.C.S.A. § 9906)

The regulations affect individuals who are found guilty of drug-related offenses after the date on which the regulations become effective. As such, the regulations do not affect an identifiable "regulated community." Nevertheless, the Department engaged in several meetings with members of the judiciary, prosecutors and defense counsel to assist them in becoming familiar with state intermediate punishment. Department staff also participated in a number of sentencing proceedings conducted via videoconference pursuant to the Guidelines which the regulations replace. The draft regulations draw upon knowledge accumulated from these various efforts.

Summary of Proposed Amendments

Section 97.101 sets forth the statute requiring issuance of State Intermediate Punishment Regulations and the overall purpose of the regulations.

Section 97.102 contains the definitions that are used in the Act and regulations.

Section 97.103 describes the process by which a defendant may be committed to the Department for an evaluation to determine whether he or she would benefit from a drug offender treatment program (DOTP) and is appropriate for placement in a DOTP. The section also governs the facility to which a defendant is to be delivered for an evaluation and the documentation that must accompany the defendant.

Section 97.104 describes the process the Department will use to conduct evaluations. The section addresses the qualifications of persons who will perform assessments and the manner in which the assessment results will be communicated to the court, the defendant, the attorney for the Commonwealth and the Pennsylvania Sentencing Commission. Section 97.104 also addresses a county's obligation to return an inmate to the county following the

assessment.

Section 97.105 identifies the persons who will constitute the Department's Program Selection Committee. The Program Selection Committee identifies the specific defendants who will be recommended for participation in state intermediate punishment.

Section 97.106 describes the Participant Selection Criteria the Program Selection Committee will use to identify specific defendants who will be recommended for participation in state intermediate punishment. The criteria include the information provided by the sentencing court, the results of the defendant's assessment of addiction and other treatment needs, the length of the sentence that typically would be imposed for the crime under the Sentencing Guidelines, the defendant's motivation to address his or her drug or alcohol use or addiction, and the availability of the Department's programming resources.

The components of a DOTP are described in section 97.107. A DOTP is twenty-four months in duration and includes a minimum of seven months in a state correctional institution. At least four of the seven months must include placement in an institutional therapeutic community. A DOTP participant must also complete a minimum of two months treatment in a community-based therapeutic community and at least six months of treatment in an out-patient addiction treatment program. All of the minimum treatment periods may be extended if the DOTP participant is not making sufficient progress in his or her treatment program. The Department also retains the ability to transfer a participant from a less restrictive to a more restrictive treatment setting. The participant can be removed from the DOTP if he or she does not make sufficient progress to be able to meet the minimum program time components.

Section 97.108 allows a defendant to be sentenced to state intermediate punishment via videoconferencing or teleconferencing. These options save the expense of transporting the defendant to the county only to return him or her to the Department.

Section 97.109 addresses a defendant's progression to less restrictive treatment settings and regression to more restrictive treatment settings. The section identifies the Department official responsible for making the determination and identifies the considerations that govern a defendant's progression and regression among more and less restrictive treatment settings.

Sections 97.110 – 97.112 describe in greater detail the process used to determine a defendant's progression and regression among more or less restrictive treatment settings. Section 97.110 also describes the reporting obligations of the treatment staff of a community-based therapeutic community. Section 97.111 provides a similar description of the reporting obligations of the treatment staff of an outpatient addiction treatment facility.

The next four sections discuss various sanctions that can be imposed on a defendant participating in a DOTP. Section 97.113 sets forth sanctions to be imposed on a defendant who tests positive for the use of alcohol or other drugs while incarcerated in a state correctional institution, community-based therapeutic community, outpatient addiction treatment facility or during supervised reintegration into society. This section encourages a defendant who believes they are in danger of relapsing to seek the opportunity to receive treatment in a more restrictive treatment setting. This provision is intended to encourage individuals to take an active and responsible role in their treatment. Section 97.114 discusses sanctions that can be imposed if a defendant violates a Department's disciplinary rule. Sections 97.115 and 97.116 set forth the criteria the Department will use to determine whether a defendant will be suspended or expelled from a DOTP.

Section 97.117 sets forth a form to be used for a defendant to consent to the disclosure of information pertaining to his or her participation in a DOTP. Consent is a necessary component of state intermediate punishment because of the need to share information among the sentencing court, prosecution, defense and the various persons who will be providing treatment to the defendant.

Section 97.118 clarifies that the regulations will be prospective only and will apply to individuals sentenced to state intermediate punishment on or after publication of the final regulations in the Pennsylvania Bulletin. Individuals sentenced prior to such publication will continue to be subject to the Department's State Intermediate Punishment Guidelines.

Fiscal Impact

The proposed regulations are not expected to have any significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public. The regulations are expected to decrease the Department's costs over time. The costs for the State Intermediate Punishment program differ from other state correctional programming due to the length of a state intermediate punishment sentence and the more intensive and costly programming being provided. The larger the number of state intermediate punishment inmates the larger the cost savings for the Department because the Department can reduce staffing as its inmate population begins to decline. The cost for 1 to 399 inmates in state intermediate punishment is \$773 per inmate stay. From 400 to 799 inmates, the Department 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 the Department will be absorbing the small numbers in current programming.

Paperwork Requirements

The Department does not expect the new requirements to have any significant effect

on the paperwork requirements of political subdivisions or the public. The information the Department is requiring counties to provide when a defendant is committed for an assessment for state intermediate punishment is substantially similar to that which counties currently must provide to the Department. The regulation is necessary as the information must be provided prior to sentencing because of the need to assess the defendant's use of or addiction to alcohol or other drugs and to evaluate the defendant for potential sentencing to a DOTP.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendments to Randall N. Sears, Deputy Chief Counsel, Office of Chief Counsel, 55 Utlely Drive, Camp Hill, PA 17011. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on (INSERT DATE) the Department submitted a copy of this notice of proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act (71 P.S. §745.5 (g)), IRRC may convey to the Department any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of the comments, recommendations or objections raised.

Effective Date

The proposed amendments shall take effect upon completion of the regulatory review process and final publication in the *Pennsylvania Bulletin*.

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

Fiscal Note: [to be provided]

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 their drug or alcohol addiction or abuse.

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.

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 – 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 previously administered medications.

(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 or addiction, 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) 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.

(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. 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) The sheriff 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.

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.

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) 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.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 19-9
SUBJECT: STATE INTERMEDIATE PUNISHMENT
AGENCY: DEPARTMENT OF CORRECTIONS

2007 FEB -1 AM 11: 11

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
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

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|--------|-----------------------|--|
| 2/1/07 | <i>A. Squigoli</i> | HOUSE COMMITTEE ON JUDICIARY |
| 2/1/07 | <i>W. Kelly</i> | |
| | <i>Deprise Patton</i> | SENATE COMMITTEE ON JUDICIARY |
| | <i>W. H. J. ...</i> | |
| 2/1 | <i>St. ...</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL (for Final Omitted only) |
| 2/1/07 | <i>Mayra ...</i> | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |