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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 18, 2007

Honorable Jeffrey A. Beard, Ph.D., Secretary  
Department of Corrections  
2520 Lisburn Road  
P. O. Box 598  
Camp Hill, PA 17011

Re: Regulation #19-9 (IRRC #2590)  
Department of Corrections  
State Intermediate Punishment

Dear Secretary Beard:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Stewart J. Greenleaf, Chairman, Senate Judiciary Committee  
Honorable Jay Costa, Jr., Minority Chairman, Senate Judiciary Committee  
Honorable Thomas R. Caltagirone, Majority Chairman, House Judiciary Committee  
Honorable Ronald S. Marsico, Minority Chairman, House Judiciary Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Corrections Regulation #19-9 (IRRC #2590)

### State Intermediate Punishment

April 18, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the February 17, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Corrections (Department) to respond to all comments received from us or any other source.

#### 1. Section 97.102. Definitions. – Consistency with statute; Clarity.

##### *DOTP--Drug Offender Treatment Program*

The statute (42 Pa. C.S.A. § 9903) references "...the terms and conditions listed in section 9905 (relating to drug offender treatment program)." In the regulation, the Department added language to replace the statutory cross-reference to "Section 9905." However, the language added to the regulation does not fully encompass the statute. We recommend that the regulatory definition fully reflect the statute.

##### *Eligible offender*

The phrase "Subject to section 9721(a.1) (relating to sentencing generally)," in the statutory definition (42 Pa. C.S.A. § 9903) was omitted in the regulation. Again, we recommend that the regulatory definition fully reflect the statute.

#### 2. Section 97.103. Commitment for assessment. – Need; Protection of the public health, safety and welfare.

##### *Nonregulatory language*

The last sentence of Subsection (a) states, "The court is encouraged to order a presentence investigation at or prior to the time the inmate is committed for evaluation." This is nonregulatory language and is unenforceable. Regulations establish binding norms of general applicability and future effect. Therefore, we recommend deleting this sentence from the regulation.

##### *"Current or previously administered medications"*

Paragraph (b)(6) requires "A notice of current or previously administered medications." The

Department should address three concerns with this phrase. First, the word “or” should be replaced with the word “and” to ensure a full history of medications. Second, it is not clear what is required by the notice of “previously administered” medications. How far back must this history go? Finally, does “medications” include just prescription medication or over-the-counter medications such as aspirin?

**3. Section 97.104. Assessment of addiction and other treatment needs. – Protection of the public health, safety and welfare; Clarity.**

*Vague phrases*

There are several vague phrases in subsection (a). Specifically, we have the following concerns:

- What “Nationally recognized assessment instrument” does the Department find acceptable?
- 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”?
- What qualifications does the Department accept for “persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments”?

We recognize that these phrases are in the statute (42 Pa. C.S.A. § 9904(b)(1)). However, the regulation should identify the Department’s interpretation of the specific types of certification, licensure, education, degrees, or experience necessary to meet these requirements.

*Cross-reference*

Subsection (d) states, in part, that “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 cross-reference to 42 Pa. C.S.A. § 9904(f) should be added.

**4. Section 97.113. Treatment sanctions. – Clarity.**

*“Or other drugs”*

Subsection (a) triggers proceedings for a participant who tests positive for the use of alcohol “or other drugs....” This provision is unclear because there are many classifications of drugs such as over-the-counter drugs, prescription drugs and illegal drugs. The regulation should specify what “other drugs” will trigger proceedings.

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Agency: Department of Corrections  
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Date: April 18, 2007  
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Correction's regulation #19-9 (IRRC #2590). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Shea Sand (Sand)* Date: *4/19/07*  
*Exec. Secretary to Secretary Beard*