

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Public Hearing Regarding Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

The Delaware River Basin Commission (Commission) will hold a public hearing and accept written comment on a proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs (City Delaware Reservoirs) for multiple objectives, including, among others: (a) water supply and drought mitigation; (b) management of the reservoir tailwater fisheries and other habitat needs; and (c) spill mitigation. The current reservoir releases program, which was established by Resolution No. 2004-3 in April of 2004, will expire on May 31, 2007. The current spill mitigation program, established by Resolution No. 2006-18, also will expire on May 31, 2007. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that consensus on the proposed FFMP is not reached. The alternative reservoir releases options to be considered are: (1) extending the current reservoir releases program; or (2) reinstating a previous drought operating plan. Either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs. The releases program adopted in the event consensus is not reached on the FFMP would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission following a notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Dates

Two public hearings on the proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, March 27, 2007, at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Written comments will be accepted through April 6, 2007. To allow sufficient time for consideration by the Commission, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the proposal. The first will take place during the morning conference session of the Commission's regularly scheduled meeting on Wednesday, February 28, 2007, at the DRBC office building in West Trenton, NJ. The second will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will take place at 10 a.m. on Tuesday, March 6, 2007, at the Commission's office building in West Trenton, NJ. The

third informational meeting will take place at 1 p.m. on Tuesday, March 27, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Driving directions to the Commission's office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for directions to the Commission, as they do not provide accurate directions to this location. Directions to the Lake Wallenpaupack Environmental Learning Center are available at www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm and also will be posted on the Commission's website, www.drbc.net, by February 20, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by United States Mail to: Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; and by fax to Attn: Commission Secretary at (609) 883-9522. In all cases, the subject line, "Comment on Flexible Flow Management Plan for City Delaware Reservoirs" should be included.

Supplementary Information

The flow management objectives considered by the Supreme Court Decree of 1954—water supply and drought—were far narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others, water supply, drought mitigation, flood mitigation, and habitat protection in the tailwaters fishery, the mainstem and the estuary. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the United States Government and the four basin states—Delaware, New Jersey, New York and Pennsylvania—the Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history. In 1983, in accordance with an agreement among the parties known as the "Good Faith Agreement," a reservoir release regime was established on a permanent basis to supplement the provisions of the decree for the limited purpose of protecting and enhancing the tailwaters fishery. Since the adoption of this regime in the form of a docket (similar to a permit) issued to the New York State Department of Environmental Conservation—Docket D-77-20 CP (Revised)—the "fishery management program" as the plan is sometimes called, has been modified repeatedly by the Commission with the unanimous consent of the decree parties. Resolution No. 2004-3, approving Docket D-77-20 CP (Revision 7), established the three-year interim program that is set to expire on May 31, 2007. A series of temporary spill mitigation programs also have been established, the latest in the form of Docket D-77-20 CP (Revision 9), approved by DRBC Resolution No. 2006-18 in September 2006.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including water supply, drought mitigation, protection of the tailwaters fishery, a diverse

array of habitat protection needs in the mainstem, estuary and bay, flood mitigation, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" to be used for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or "ramping") from higher to lower releases and vice versa than the current regime. The FFMP would include a spill mitigation component similar to but potentially more aggressive than the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for spill mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If consensus among the decree parties and Commissioners cannot be reached on details of the FFMP in time to approve and initiate implementation of the plan by June 1, 2007, the parties intend to continue to work at refining and improving the FFMP until such a consensus can be reached. The Commission will conduct a separate notice and comment rulemaking process on the proposed program at that time. Under those circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, the releases program will be considered in combination with a spill mitigation plan.

The proposed FFMP in its entirety will be posted on the website of the Commission, www.drbc.net, on Tuesday, February 20, 2007.

Further Information, Contacts

The text of the proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007 and will remain posted through May 10, 2007. Contact Pamela M. Bush, Esquire, Commission Secretary

and Asst. General Counsel at (609) 883-9500 Ext. 203 with questions about the proposed rule change or the rulemaking process.

PAMELA M. BUSH,
Secretary

[Pa.B. Doc. No. 07-244. Filed for public inspection February 16, 2007, 9:00 a.m.]

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 97]

State Intermediate Punishment

The Department of Corrections (Department) proposes to amend Chapter 97 (relating to State intermediate punishment) to read as set forth in Annex A.

Statutory Authority

The Department is acting under the authority of 42 Pa.C.S. § 9906 (relating to written guidelines and regulations).

Purpose and Background

The Commonwealth's first State Intermediate Punishment Program was established by 42 Pa.C.S. Chapter 99 (relating to State intermediate punishment). 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.

Chapter 99 of 42 Pa.C.S. 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 (DOTP) and is appropriate for placement in a program, the Department will develop an individualized DOTP for the defendant. The judge may sentence the defendant to participate in a DOTP with the agreement of the defendant and the attorney for the Commonwealth.

A DOTP will be 24 months in duration and consist of at least four components. The defendant shall serve a minimum of 7 months incarceration in a State correctional institution, during which the defendant shall receive a minimum of 4 months treatment in an institutional therapeutic community. The defendant then will receive a minimum of 2 months treatment in a community-based therapeutic community and a minimum of 6 months treatment through an outpatient addiction treatment facility. The balance of the 24-month program consists of supervised reintegration into the community. Under 42 Pa.C.S. Chapter 99, the Department can 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 DOTP. A defendant who is expelled from the program will be resentenced by the court.

Under 42 Pa.C.S. Chapter 99, the Department was required to develop written State intermediate punishment guidelines. The guidelines were not subject to the Regulatory Review Act (71 P.S. §§ 745.1—745.15) and were published at 35 Pa.B. 3053 (May 21, 2005). The guidelines are effective for 2 years following publication and must be replaced by regulations promulgated consistently with the Regulatory Review Act within the 2-year period. (See 42 Pa.C.S. § 9906) (relating to written guidelines and regulations).)

The proposed rulemaking affects individuals who are found guilty of drug-related offenses after the date on which the proposed rulemaking becomes effective. Therefore, the proposed rulemaking does 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 by means of videoconference under the guidelines which this proposed rulemaking will replace. The draft regulations draw upon knowledge accumulated from these various efforts.

Summary of Proposed Amendments

Section 97.101 (relating to authority and purpose) sets forth the statute requiring issuance of State intermediate punishment regulations and the overall purpose of the regulations.

Section 97.102 (relating to definitions) contains the definitions that are used in 42 Pa.C.S. Chapter 99 and the regulations.

Section 97.103 (relating to commitment for assessment) describes the process by which a defendant may be committed to the Department for an evaluation to determine whether he would benefit from a 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 (relating to assessment of addiction and other treatment needs) 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 (relating to DOTP Selection Committee) 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 (relating to participant selection criteria) 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 drug or alcohol use or addiction and the availability of the Department's programming resources.

The components of a DOTP are described in § 97.107 (relating to DOTP). A DOTP is 24 months in duration and includes a minimum of 7 months in a State correctional institution. At least 4 of the 7 months must include placement in an institutional therapeutic community. A DOTP participant must also complete a minimum of 2 months treatment in a community-based therapeutic community and at least 6 months of treatment in an out-patient addiction treatment program. The minimum treatment periods may be extended if the DOTP participant is not making sufficient progress in the 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 does not make sufficient progress to be able to meet the minimum program time components.

Section 97.108 (relating to confinement in a State correctional institution) allows a defendant to be sentenced to State intermediate punishment by means of videoconferencing or teleconferencing. These options save the expense of transporting the defendant to the county only to return him to the Department.

Section 97.109 (relating to program advancement and regression) 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 (relating to community-based therapeutic community; outpatient addiction treatment facility; and supervised reintegration into the community) 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.

Sections 97.113—97.116 discuss various sanctions that can be imposed on a defendant participating in a DOTP. Section 97.113 (relating to treatment sanctions) 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 he is 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 (relating to disciplinary sanctions) discusses sanctions that can be imposed if a defendant violates a Department's disciplinary rule. Sections 97.115 and 97.116 (relating to suspension from a DOTP; and expulsion from a DOTP) set forth the criteria the Department will use to determine whether a defendant will be suspended or expelled from a DOTP.

Section 97.117 (relating to consent to disclosure of information) sets forth a form to be used for a defendant

to consent to the disclosure of information pertaining to 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 (relating to applicability) 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-form rulemaking in the *Pennsylvania Bulletin*. Individuals sentenced prior to publication will continue to be subject to the Department's State intermediate punishment guidelines.

Fiscal Impact

The proposed rulemaking is not expected to have 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 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 proposed rulemaking 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 comments, suggestions or objections regarding the proposed rulemaking to Randall N. Sears, Deputy Chief Counsel, Office of Chief Counsel, 55 Utley 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 January 31, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to 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, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Effective Date

The proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

JEFFREY A. BEARD, Ph.D.,
Secretary

Fiscal Note: 19-9. (1) General Fund;

(2) Implementing Year 2006-07 is	\$0*
(3) 1st Succeeding Year 2007-08 is	\$1,594,274
2nd Succeeding Year 2008-09 is	\$4,375,118
3rd Succeeding Year 2009-10 is	\$3,248,007
4th Succeeding Year 2010-11 is	\$0
5th Succeeding Year 2011-12 is	\$0

State Correctional Institutions

(4) 2005-06 Program—	\$1,086,505,000
2004-05 Program—	\$1,055,589,000
2003-04 Program—	\$1,028,246,000

(7) State Correctional Institutions; (8) recommends adoption.

* Implementing year shows no costs because they will be absorbed in the current budget.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 97. STATE INTERMEDIATE PUNISHMENT DRUG OFFENDER TREATMENT PROGRAM

(*Editor's Note:* The following text is new. It has been printed in regular type to enhance readability.)

§ 97.101. Authority and purpose.

(a) This chapter is published under the act and establishes the DOTP administered by the Department. This chapter is intended to inform judges, prosecutors, defense counsel, defendants and the general public about the DOTP.

(b) The DOTP 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 DOTP 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 guidelines, have the following meanings, unless the context clearly indicates otherwise:

Act—42 Pa.C.S. Chapter 99 (relating to State intermediate punishment) establishing the DOTP.

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 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 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.

DOTP—Drug Offender Treatment Program—An individualized treatment program established by the Department consisting primarily of drug and alcohol addiction treatment and lasting for 24 months and including a period of at least 7 months in a State correctional institution, a minimum of 4 months of which shall be in an institutional therapeutic community; a period of treatment in a community-based therapeutic community of at least 2 months; at least 6 months treatment through an outpatient addiction treatment program; and a period of supervised reintegration into the community.

Defendant—An individual charged with a drug-related offense.

Department—The Department of Corrections of the Commonwealth.

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 Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

Eligible offender—

(i) A defendant designated by the sentencing court as a person convicted of a drug-related offense who:

(A) 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 DOTP and that placement in a DOTP would be appropriate.

(B) Does not demonstrate a history of present or past violent behavior.

(C) Would be placed in the custody of the Department if not sentenced to State intermediate punishment.

(D) Provides written consent permitting the release of information pertaining to the defendant's participation in a DOTP.

(ii) The term does 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 Commission, or a defendant who has been convicted of a personal injury crime as defined in section 103 of the Crime Victims Act (18 P. S. § 11.103), or an attempt or conspiracy to commit such a crime or who has

been convicted of violating 18 Pa.C.S. § 4302, § 5901, § 6312, § 6318, § 6320 or Chapter 76, Subchapter C.

Expulsion—The permanent removal of a participant from a DOTP.

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 DOTP.

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 as qualified to provide addiction treatment to criminal justice offenders.

Participant—An eligible offender actually sentenced to State intermediate punishment under 42 Pa.C.S. § 9721(a)(7) (relating to sentencing generally).

RAP sheet—A record of arrest and prosecution.

Transitional residence—A residence investigated and approved by the Department as appropriate for housing a participant in a DOTP.

§ 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 presentence 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 set forth in this subsection 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 the following documents:

(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 48-hour supply of current medications.

(c) Within 7 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 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 (relating to requirements for driving under influence offenders) or any other provision of law.

(3) A presentence investigation when available or if a presentence 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) 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 will 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 will 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 those 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 3 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 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 will encourage resolution of as many unresolved charges against the defendant as possible prior to 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.

(e) 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. DOTP Selection Committee.

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

(b) The Participant Selection Committee shall apply the participant selection criteria to determine whether a defendant will benefit from a DOTP and whether 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 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 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 Commission.

(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 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 has 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 that number that the Participant Selection Committee believes will neither under use nor overtax the available programming resources.

§ 97.107. DOTP.

(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 education and employment issues.

(b) A DOTP developed for a defendant shall be 24 months in duration and include the following:

(1) A period of confinement in a State correctional institution of at least 7 months, including the assessment period prior to the imposition of sentence and at least 4 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 2 months.

(3) A period of at least 6 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 by means of videoconferencing subject to equipment and staff availability. A defendant who is not sentenced by means of videoconferencing, 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 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 incarceration.

§ 97.109. Program advancement and regression.

(a) An individual DOTP contemplates that a participant will progress 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 in the act, the Department may 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 a 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 the 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 DOTP.

(b) The participant will be required to continue engaging in his 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 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 DOTP at the conclusion of the participant's first 2 months in the community-based therapeutic community.

(1) The report must include a recommendation whether the participant has progressed sufficiently to begin the outpatient addiction treatment portion of his 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.

(2) The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted.

(3) The report must be transmitted to the Chief of the Department's Central Office Treatment Division, or a designee.

(d) The Department will 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 subsection (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 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 the residence.

(b) A participant will be required to continue his 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 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 DOTP at the conclusion of the participant's first 6 months of treatment with the outpatient addiction treatment facility.

(1) The report must include a recommendation whether the participant has progressed sufficiently to begin 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.

(2) The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted.

(3) The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or a designee.

(d) The Department will 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 addition treatment program to submit reports in addition to the report required by subsection (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 DOTP. The participant may continue to 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 the residence.

(b) A participant residing in an approved transitional residence will be supervised by the Department during the remainder of his 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 in §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary sanctions) 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 in the Department's inmate disciplinary policy. If the hearing examiner 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 while 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 a designee, or suspended or expelled from the DOTP.

(b) Subject to the time limitations in the act, a participant who requests assistance because he believes he is 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 a 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 in the Department's inmate disciplinary policy.

(b) If the hearing examiner determines that the participant committed a Class 1 or Class 2 misconduct, the Chief of the Department's Central Office Treatment Division, or a 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 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 a 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 a 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 a designee, and shall 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 §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary actions), a participant who violates the conditions of his DOTP or who is not constructively participating in his DOTP or who will be unable to complete his DOTP within the period remaining on his 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 a 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 a 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 the expulsion. The inmate will be housed in a State correctional institution or county prison pending action by the court.

§ 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.

This chapter applies to defendants sentenced to State intermediate punishment on or after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

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