

## **Comprehensive Prison Package Acts 81, 82, 83 and 84 of 2008**

### **I. Introduction:**

On September 25, 2008, Governor Rendell signed into law 4 bills (House Bills 4-7) commonly referred to as the “Prison Package.” These Acts substantially change a wide variety of existing prison-related laws. Specifically, there are substantial changes relating to place-of-confinement, aggregation, work release, early parole, parole jurisdiction, compassionate release, State Intermediate Punishment, prisoner information, and prisoner transportation. Although these provisions have varying effective dates (60 days, 120 days, and 3 years), there are some key provisions that take effect on November 24, 2008 and require various criminal justice practitioners and stakeholders to adjust current practices.

### **II. Goals Behind Prison Package:**

Because the prison package contains many amendments to existing laws and new provisions found in various Titles, it is helpful to understand that these changes are designed to work together and support various public policy goals. These include provisions designed to:

- Reduce county jail overcrowding and relieve the pressure to release jail inmates;
- Shift the burden for incarceration and treatment of serious offenders from the county system to the state system;
- Improve parole practices to ensure that public and victim safety is the primary consideration and ensure consistency and fairness;
- Improve offender treatment through centralized programs, administrative support, and specialized expertise;
- Ensure truth-in-sentencing for the victim, the public and the offender;
- Provide incentives for non-violent offenders to participate in evidence-based rehabilitative programs proven to reduce the recidivism risk;
- Improve inmate safety through the improved exchange of information between the county and state system;
- Provide for compassionate release of terminally ill inmates with appropriate safeguards; and
- Reduce taxpayer costs through the centralization of treatment programs and prisoner transportation.

### **III. Major Provisions:**

- a. **Place of Confinement Amendments.** These amendments (Act 81, HB 4 pp. 15-19) will do the following:
  - i. require the state to house prisoners serving sentences of 2 or more years (eff. 3 years);

- ii. allow prisoners, under limited circumstances, to serve 2-5 year sentences in the county (with DA and court consent if the county jail administrator agrees there is room and the jail population is less than 110% of the rated capacity) (eff. 3 years);
- iii. require aggregation of sentences for determining place of confinement (eff. 11/24/08);
- iv. allow judges to change the place of confinement of previously sentenced prisoners (eff. 11/24/08);
- v. require the state to reimburse counties for long-term work release (but with a state-wide cap of \$2.5 million) (eff. 3 years)

b. **Temporary Transfer of Prisoners for Judicial Proceedings.**

Act 82 (HB5) is effective in 120 days (1/23/09) and is designed to reduce overall taxpayer costs through consolidation of prisoner transportation and to reduce the risk of prisoner escapes. It requires the Department of Corrections (DOC) to transport state prisoners to state prisons near the courthouse. From there, the county sheriff could conduct day transportation trips and, hopefully, most state prisoners would not enter the county jails. Counties electing to use this transportation system would reimburse the DOC for the cost of transportation, but not the cost of confinement. This new law is designed to reduce overall taxpayer costs through consolidation of transportation, to reduce the risk of prisoner escapes, and to allow county sheriffs to focus on other work.

However, there will be limits on DOC's transportation obligations:

1. DOC will have discretion to determine which nearby state facilities to use (DOC is not required to house an inmate in the facility nearest the courthouse);
2. DOC is not required to transport unless the county judge must entered an order “directing the inmate's presence at a judicial proceeding” and found that videoconferencing is not permissible; and
3. DOC will have the option to not transport and house the inmate nearby if the inmate has already been transferred twice in the preceding 6 months. DOC will not be required to house inmates in the nearby facilities for an extended period.

c. **Parole.**

- i. **Parole Guidelines:** In summary, the Sentencing Commission will promulgate parole guidelines. The guidelines must make “public safety and victim safety” the primary consideration in parole decisions. In addition, the Commission is required to use validated risk assessment tools and evidence-based practices in developing these guidelines. In addition to initial parole decisions, guidelines would also apply to recommitments, backtime, reparaoles, and resentencings. The county judges, like the PBPP, would be covered by the statutory

requirements and parole guidelines. Thus, like sentencing guidelines, there would be new constraints on judicial discretion. (Although the statutory provisions are effective 11/24/08, it will take some time for the guidelines to be developed.)

- ii. **Parole Jurisdiction:** There will also be significant changes in parole jurisdiction. Judges will be responsible for paroles of inmates serving 2-5 year sentences in the county prison, under the new place of confinement provisions that will take effect in 3 years. Importantly, no inmate will be subject to this parole jurisdiction change unless the DA, county jail administrator and judge previously agreed to the county prison placement. When the final provisions take effect, the PBPP would no longer be in the business of paroling prisoners from county prisons unless they have agreed to accept a “special parole.” (effective 9/25/11).
- iii. **Administrative Parole:** PBPP will have statutory authorization to reduce reporting requirements to at least once per year (termed “administrative parole”) for certain classes of non-violent offenders who have been successfully managed for a period of time on parole. (The amendments designed to accomplish this are found in Act 83 (HB 6).) (effective date 11/24/08).
- iv. **"Rebuttable" Parole at the Minimum.** These Act 83 amendments (HB6) and Act 81 (HB 4) will allow for the presumptive parole of non-violent prisoners who meet the Recidivism Risk Reduction Incentive (RRRI) eligibility standards. These prisoners will be eligible for rebuttable parole at the expiration of their minimum sentences if they have maintained a good conduct record in prison, they don't pose a public safety risk, and there is an adequate parole plan. The proposed language also adds substantial checks and balances. (effective date 11/24/08).
- v. **Early county parole/new sentencing order requirements:** For county prisoners with sentences of less than 2 years, a judge must state at sentencing whether the defendant is “eligible to participate in a reentry plan” and, if so, at what point (any time or after the expiration of a period of time). While a “reentry plan” is very broadly defined, no early parole, or earned time/good time release, may be granted prior to the expiration of the minimum sentence without this sentencing eligibility statement. This statement must also be entered in the record and reported as part of the sentence. In addition, prosecutors are entitled to 10 days notice and an opportunity to be heard on any request to release the defendant prior to the expiration of the minimum sentence. 42 Pa.C.S.A § 9756(b)(2)-(3) (as amended by Act 81) (effective 11/24/08).

**d. New work release procedures.**

Under 42 Pa.C.S.A. §9813 (amended by Section 8.1 of Act 81) (effective 11/24/08) judges make prisoners “eligible” for work release but county jails have the final say on whether a county prisoner may be released, detained, or recommitted. The changes applicable to various criminal justice stakeholders are as follows:

- i. Prosecutors:**
  1. have the right to notice and an opportunity to be heard on a petition for work release;
  2. [Note: should consider including a statement in all victim notification letters involving county prisoners to the effect that:
    - a. the defendant may be eligible for “work release;”
    - b. “work release” petitions cover a wide variety of issues; and
    - c. registered crime victims have the right to notice and an opportunity to be heard on a work release petition.]
- ii. Victims:**
  1. must be notified at the time of sentencing that the offender may be eligible for work release;
  2. have notice and opportunity to be heard on a work release application;
- iii. Judges:**
  1. Must ensure that prosecutor and registered crime victim have written notice of the work release petition and the opportunity to be heard;
  2. have the discretion to
    - a. make county prisoners “eligible” for work release;
    - b. set conditions for work release; and
    - c. revoke an eligibility order upon notice to the inmate.
- iv. County jail:**
  1. has the power to preclude an offender from leaving the jail, or detain, or recommit him because he:
    - a. poses a risk to community safety;
    - b. poses a risk to the orderly management of the jail;
    - c. violated conditions set by the jail; or
    - d. violated conditions set by the judge.
- v. Prisoners:**
  1. may petition for work release;
  2. must abide by conditions set by the jail or judge; and
  3. are entitled to notice before a judge revokes an “eligibility” order (but this doesn’t preclude the prison from refusing to allow him to leave, detaining him, or recommitting him).

e. **New sentencing procedures: the Recidivism Risk Reduction Incentive (RRRI) program.**

Act 81 also amends 42 Pa.C.S.A. § 9756 and adds a new chapter in Title 44 (HB4). This comprehensive proposal (known as the “Recidivism Risk Reduction Incentive Program,” RRRI, or “Triple-R Eye”) is designed to ensure that nonviolent prisoners participate in evidence-based programs proven to reduce recidivism. In addition to amendments to 42 Pa.C.S.A. § 9756 (sentencing provisions), there are definitional provisions, limits on eligibility, limits on the types of programs that can be approved, additional public safety protections, requirements for published guidelines and regulations, reports, evaluations, and an educational plan (targeted for DAs, the defense bar, judges, and others). This limited program is modeled on a successful recidivism reduction program in New York State. Research also demonstrates that this targeted approach can reduce recidivism rates for program participants.

RRRI requires new sentencing procedures. Here’s how it works: Certain nonviolent offenders to be sent to state custody are now automatically entitled to receive an alternative minimum sentence called a RRRI minimum (in addition to the usual minimum and maximum sentence). If they complete certain programs, they are eligible for parole at this earlier date. RRRI minimum sentences are *mandatory* and the failure to impose one would most likely be viewed as a *per se* illegal sentence, automatically entitling the prisoner to a resentencing. The details relating to eligibility, procedures, and sentencing calculations are attached. (The sentencing procedures are effective 11/24/08 but the RRRI program approval process in 42 Pa.C.S.A. §5304(e) will take a minimum of 60 days to implement.)

f. **Medical Release.** Act 84 (HB7) replaces an outdated medical treatment statute, 61 P.S. § 81, that is almost 100 years old. This new law is designed to allow judges to place prisoners in hospitals, long-term nursing care facilities and hospice care locations. However, the requirements for such placements are quite stringent. For example, the prisoner must be “seriously ill and not expected to live for more than one year,” the facility must have agreed to accept the placement, the court must consider public safety and escape risks, and the DA and victim are entitled to notice and an opportunity to be heard. There are also additional requirements about provisions that must be contained in the court order. (effective 11/24/08).

g. **Department of Corrections Requests for SIP Referral.** Act 81 amendments to Title 42 (HB4, pp. 27-28) allow the Department of Corrections (DOC) request that an eligible prisoner be considered for State Intermediate Punishment (SIP). These amendments retain the requirement of the DA’s consent to the placement and sentence modification. The SIP

resentencing must occur within 365 days of the placement in DOC custody. (eff. 11/24/08).

**h. Prisoner Information Provisions.**

Act 81 (HB 4) amends 42 Pa.C.S.A. § 9764 to require that certain information accompany prisoners admitted to the state system. These amendments will ensure that the DOC has medical information, escape history, prison infraction records, sentencing credit information, and other information necessary for the safe management of prisoners. There are also requirements about information/medication for released prisoners. The Act includes language that would minimize the burden on the county system and encourage the use of electronic records. (eff. 11/24/08).

## Act 81 (HB 4): Section-by-Section Analysis

### Booking Centers

Section 1. (Pages 1-4) Creating 42 Pa.C.S.A. § 1725.5 and 1725.6 (relating to “Booking Centers”) (generally unrelated to prison issues).

### Parole Guidelines

Section 1.1 (Page 5) Amending 42 Pa.C.S.A. § 2151.1 (definitions relating to the Sentencing Commission)

Section 2. (Page 5) Amending 42 Pa.C.S.A. § 2152 (composition to Sentencing Commission) to add Secretary of Corrections, the Victim Advocate, and the Chairman of the Pennsylvania Board of Probation and Parole (PBPP) as *ex-officio* members).

Section 3 (pages 5-8) amending 42 Pa.C.S.A. § 2153 (powers and duties of the Sentencing Commission) to empower the Sentencing Commission to do research, collect data, disseminate information, make legislative recommendations, monitor guideline compliance, and use simulation models—all functions relating to the guidelines that will be applicable to various parole functions.

Section 3.1 (page 8) amending 42 Pa.C.S.A. § 2154(a) (adoption of guidelines for sentencing) to allow sentencing guidelines to consider impact of RRRI and early parole limits established in 42 Pa.C.S.A. § 9756.

Section 4 (pages 8-10) amending 42 Pa.C.S.A. § 2154.4 (adoption of guidelines for resentencing); 42 Pa.C.S.A. § 2154.5 (adoption of guidelines for parole); 42 Pa.C.S.A. § 2154.6 (adoption of recommitment ranges following revocation of parole).

Section 5 (pages 10-14) amending 42 Pa.C.S.A. § 2155 (publication of guidelines for resentencing, parole, recommitment ranges following revocation); 42 Pa.C.S.A. § 9718.3 (technical amendment to the Megan’s Law registration); 42 Pa.C.S.A. § 2121 (sentencing generally; amends current language to require court to consider guidelines for resentencing, for parole and recommitment ranges).

## **Sentencing Procedures, RRRI and Early Parole**

Section 6 (pages 14-15) amending 42 Pa.C.S.A. § 9756(b) (sentence of total confinement). These provisions require a substantial change in sentencing practices:

- 42 Pa.C.S.A. § 9756(b)(2) precludes a parole prior to the expiration of the minimum sentence unless authorized by law.
- 42 Pa.C.S.A. § 9756(b)(3) permits a judge to grant early parole on a sentence of less than two years (or a sentence of more than two years imposed when Section 9762(f) takes effect in three years) provided that the judge states as part of the sentence that the defendant is eligible for a “reentry plan” (defined in (e) below), and the judge provides 10 days written notice to the DA and an opportunity to be heard. For purposes of determining eligibility for early parole (i.e., a sentence of less than two years), all terms of confinement are aggregated.
- 42 Pa.C.S.A. § 9756(b.1) requires a judge to impose a “Recidivism Risk Reduction Incentive Minimum” for defendants eligible under the new 44 Pa.C.S.A. Ch.53. For defendants with two or more prior RRRI, the judge has the discretion to not establish a RRRI minimum.
- 42 Pa.C.S.A. § 9756(e) is amended to add a definition of the term “reentry plan.” The term is broad and includes “drug and alcohol treatment, behavioral health treatment, job training, skills training, education, life skills, or any other conditions deemed relevant by the court.”

## **Place of Confinement**

Section 7 (pages 15-19) amending 42 Pa.C.S.A. § 9762 (sentencing proceedings; place of confinement).

- 42 Pa.C.S.A. § 9762(a)--continues the current place of confinement scheme for the next three years)
- 42 Pa.C.S.A. § 9762(b)—for sentences imposed three years after the effective date of this act, person subject to 2 or more years but less than 5 years confinement must be sent to the state system unless the judge, DA, and prison administrator agree to the placement in the county system.
- 42 Pa.C.S.A. § 9762(c) precludes the prison administrator from agreeing to keep a defendant in this 2-5 year range in the county system unless the county prison population is less than 110% of rated capacity.
- 42 Pa.C.S.A. § 9762(d) making clear that judge still has power to order county intermediate punishment provided county confinement is not required.
- 42 Pa.C.S.A. § 9762(e) establishing a reimbursement of \$2.5 million per year to county jails for work release after 3 years. (Note, this doesn’t guarantee that the Legislature will appropriate money for this purpose in future years.)
- 42 Pa.C.S.A. § 9762(f) clarifying the law of aggregation and making clear that aggregation of any consecutive term of imprisonment (regardless of its form) must be aggregated for determining place of confinement. (Note--this provision is effective 11/24/08.)

- 42 Pa.C.S.A. § 9762(g) –making clear that the last date of imposition of sentence or recommitment is controlling for determining the applicable place-of-confinement provisions.
- 42 Pa.C.S.A. § 9762(h)—making clear that judges can change the place-of-confinement and transfer previously sentenced prisoners to the state system. (Note--this provision is also effective 11/24/08.)

### **Prisoner Information and Medication for Transferred/Released Inmates**

Section 8 (pages 19-26) amending 42 Pa.C.S.A. § 9764 (information required upon commitment and subsequent disposition). This is an extremely detailed section that will be need to be carefully reviewed by anyone responsible for preparing commitment paperwork or transporting county inmates to the Department of Corrections. In summary, these amendments (together with current law) require:

- 42 Pa.C.S.A. § 9764 (a) requiring copy of DC-300B form from CPCMS, adjustment record (including misconducts/escape history), medical psychological information, medical records, current medication, 48 hour supply of medication, statement of sentencing credit, statement of incarceration dated/pending charges/bail release dates, copy of sentencing order and detainers.
- 42 Pa.C.S.A. § 9764 (b) additional information required from court within 10 days of sentence—presentence report, official version of offense (or copy of guilty plea transcript of preliminary hearing transcript), criminal complaint or affidavit of probable cause, sentencing guideline form, sealed sentencing order, sentencing colloquy, court commitment orders, DC-300B from CPCMS, and any detainers.
- 42 Pa.C.S.A. § 9764 (c) requires county correctional facility to transmit additional information about the inmate received from the court after the transfer to state custody (20 days).
- 42 Pa.C.S.A. § 9764 (c.1) (implementation)—authorizes DOC to refuse to accept inmates with incomplete paperwork if: county has pattern and practice of not providing paperwork required by this section; DOC previously notified certain county officials of this problem; DOC provided county with a reasonable time to provide paperwork; and DOC has given county officials 30 days notice of intent to refuse to accept inmates without documentation. Also requires sheriff to return inmates refused admission under this section to the county jail. Finally, this establishes various immunities for DOC for relying in good faith on paperwork provided.
- 42 Pa.C.S.A. § 9764 (c.2) (effect of electronic transfer of information) – recognizing electronic transfer for information required under this section but allowing DOC to require actual sealed court orders.
- 42 Pa.C.S.A. § 9764 (d) (transfer to county facilities)—requiring DOC to provide information to county jails when transferring an inmate there.

- 42 Pa.C.S.A. § 9764 (e) (release by Dept. of Corrections)—requiring DOC to provide certain information to the state parole board (PBPP) prior to the release of an inmate.
- 42 Pa.C.S.A. § 9764 (f) (release from county correctional facility to State probation or parole)—requiring county jails to provide information to PBPP when releasing inmate on state probation or parole and provide inmate with a supply of medications and necessary medical supplies.
- 42 Pa.C.S.A. § 9764 (g) (release from county correctional facility to county probation or parole)—requiring county prisons releasing inmate on county probation or parole to provide certain information to the county probation/parole office and provide inmate with supply of medications and medical supplies.
- 42 Pa.C.S.A. § 9764 (h) (record of inmate moneys)—requiring DOC and county jails to provide information to parole/probation authorities about record of inmate payment of court-ordered financial obligations.
- 42 Pa.C.S.A. § 9764 (i) (continuing payments)—requiring PBPP to establish a condition of parole that an inmate continue to make payments on court-ordered financial obligations.
- 42 Pa.C.S.A. § 9764 (j) (release after maximum sentence)—where DOC is releasing an inmate who has served his maximum sentence, this provision now requires DOC to notify county authorities of the inmate’s record of payments and outstanding amounts relating to restitution and other court-ordered payments.
- 42 Pa.C.S.A. § 9764 (k) (procedures)—requiring DOC and PBPP to establish procedures to implement these provisions.
- 42 Pa.C.S.A. § 9764 (l) (application)—applies to offenders transferred or released after effective date (11/24/08).

### **Work Release-County Jails**

Section 8.1 (pages 26-27) adds 42 Pa.C.S.A. § 9813 (work release and other court order and purposes). These provisions establish procedures and requirements for county jail inmates seeking work release.

- Subsection (a) authorizes judges to make inmates in county jails “eligible” for work release (although the purposes of release expand beyond traditional “work”).
- Subsection (b) requires that the victim be informed at the time of sentencing that the offender may be eligible for release under this section. It also requires “notice” and an “opportunity to be heard” for the victim and DA when the defendant files a work release application.
- Subsection (c) addresses the revocation and modification of previously entered orders. It specifically authorizes the *county jail* to detain and recommit the offender if he or she violates release conditions, poses a risk to the community, or the orderly and safe management of the jail. In addition, the judge is authorized to revoke the eligibility order upon notice to the inmate.

## **State Intermediate Punishment**

Section 8.2 (pages 27-28) amending 42 Pa.C.S.A. § 9904 (referral to State Intermediate Punishment) (SIP). This amendment permits DOC to request the resentencing of a previously sentenced prisoner to SIP. The court may grant this request only if DOC has requested placement, the DA and defense attorney agree, the court makes the relevant SIP findings, the resentencing is occurring within 365 days of the defendant's reception in the DOC, and the court complies with victim notification provisions.

## **Recidivism Risk Reduction Incentive (RRRI)**

Section 9 (pages 28-40) creates a new Chapter 53 in Title 44. This includes the provisions relating to the Recidivism Risk Reduction Incentive (RRRI) Program (already called "Triple-R Eye"). In summary, this Chapter and related amendments allow a limited class of offenders who will be placed in the DOC to be sentenced to a RRRI minimum sentence (in addition to the traditional minimum and maximum sentences). If these offenders complete DOC programs designed to reduce their recidivism risk and comply with other requirements, they are eligible for release on parole by PBPP at their RRRI minimum date. The RRRI provisions are fairly complex and are not summarized here in detail. However, below is a list of the new sections in this Chapter along with a brief description.

- § 5301 (scope of chapter).
- § 5302 (purpose).
- § 5303 (definitions)—includes a detailed definition of "eligible offender"
- § 5304 (RRRI programs)—
  - (a) authorizing DOC to create RRRI programs;
  - (b) intent to encourage eligible offenders to participate in evidence-based programs that reduce the likelihood of recidivism and improve public safety;
  - (c) establishing programs requirements (appropriate scientific evidence that it reduces overall recidivism rates or serious crime rates; and establishing requirements for therapeutic communities;
  - (d) requiring DOC to consult with appropriate research and technical assistance organizations in the developing of RRRI programs; and
  - (e) establishing a program approval process (including public notice, citation to research, and public comment).
- § 5305 (sentencing)—
  - (a) Requiring court to make eligibility determination at time of sentencing;
  - (b) Allowing DA to waive eligibility requirements, but requiring notice and opportunity to be heard by the victim and authorizing the court to reject the waiver;
  - (c) RRRI minimum sentence—

- (1) for eligible offenders, court shall enter a maximum sentence, a minimum sentence, and a RRRI minimum sentence;
  - (2) RRRI minimum equal to:  $\frac{3}{4}$  of minimum sentence for minimum sentences of 3 years or less and  $\frac{5}{6}$  of minimum sentences of more than 3 years; aggregation provisions of 42 Pa.C.S.A §§ 9757 & 9762(d) apply;
  - (3) Judge has discretion to refuse to impose RRRI minimum for offenders who previously received 2 or more RRRI sentences; and
  - (4) Must comply with other sentencing requirements.
- § 5306 (RRRI minimum)—
    - (a) Authorizing PBPP to automatically parole offenders who have been sentenced to RRRI and successfully completed the RRRI program under certain conditions (DOC used a normed and validated assessment tool; DOC certifies that program plan designed to reduce recidivism risk for the particular prisoner; DOC advised the prisoner to complete the program plan; prisoner successfully completed the program plan; prisoner maintained a good conduct record; reentry plan is adequate; individual parole conditions have been established; notice and opportunity to be heard by DA and sentencing court; prisoner continues to remain an “eligible offender”, and no reasonable indication of a public safety risk).
    - (b) DOC required to seek appropriate funding for RRRI programs;
    - (c) Program content—DOC not required to include RRRI programs in an individual program plan if risk assessment shows they are unlikely to reduce recidivism for that particular prisoner, DOC can use community works or public service as part of the plan; DOC not precluded from modifying the program plan to ensure appropriate treatments and program placement.
    - (d) Section shall not be construed as granting a right to parole and a decision under this section does not constitute “adjudication” under provisions relating to judicial review of Commonwealth agency actions.
  - § 5307 (authority of PBPP)—Where a prisoner has a RRRI minimum sentence but is not granted paroled under RRRI provisions, PBPP has exclusive power to grant parole. PBPP also retains the power to parole, commit and reparole DOC prisoners.
  - § 5308 (written guidelines and regulations)
  - § 5309 (evaluation)—requiring a rigorous scientific evaluation of the RRRI program to determine its effectiveness and whether it reduced recidivism rates.
  - § 5310 (reports)—(a) requiring DOC, PBPP and the Sentencing Commission to provide detailed reports to the Legislature about the RRRI program; and (b) requiring PCCD to develop and report on a detailed

educational plan designed to educate criminal justice practitioners and stakeholders on a wide variety of prison-related topics.

- § 5311 (construction)—making clear that this Chapter doesn't confer legal rights on any individual.
- § 5312 (applicability)--applies only to persons incarcerated in DOC.

### **Miscellaneous**

Section 10. (page 41) Repealer.

Section 11. Effective dates: Booking centers--180 days; everything else—60 days.

## Act 82 (HB 5): Section-by-Section Analysis

Section 1. amending the “Prisoner Transfer Law” P.L. 1044, No. 425.

- (a) Adding a title to the current law relating to discretionary transfers but not making any substantive changes to 61 P.S. § 72.
- (b) Creating a new section entitled “temporary transfers” that
  - 1) Requires DOC to temporarily transfer state inmates to DOC prisons near the county courthouse where the prisoners is needed for a court hearing (but gives DOC discretion about the facility chosen based on the prisoner’s security level and available bedspace);
  - 2) Does not require DOC to temporarily transfer unless:
    - i. Court entered order directing inmate’s presence;
    - ii. Court finds that inmate’s presence is required; and
    - iii. The law doesn’t permit testimony or participation by videoconferencing.
  - 3) Requires DOC to establish regulations to implement this section that:
    - i. Require 14 days notice of the temporary transfer order;
    - ii. The inmate be returned to home institution after conclusion of hearing;
    - iii. Do not require DOC to do a temporary transfer for a particular inmate more than twice in a 6 month period or hearing scheduled to last more than one week.
  - 4) Requires DOC to publish interim guidelines pending implementation of regulations.
  - 5) Allows DOC to presume judicial proceedings have concluded unless court notifies DOC to the contrary.
  - 6) Allows DOC to require counties to pay the reasonable cost of transportation. Reimbursements to DOC are automatically reappropriated to DOC; nothing prohibits county from using alternative transportation methods.
  - 7) Makes clear that nothing in this section will be construed to authorize a judge to designate a particular place of confinement or length of confinement in temporary correctional institution.

Section 2. Effective date. 120 days (1/23/09).

## Act 83 (HB 6): Section-by-Section Analysis

Section 1. (page 1) amending 61 P.S. § 331.1 (public policy as to parole) to make clear that this provision applies to “any other paroling entity” (which includes county judges granting parole) and requires PBPP and judges to consider the parole guidelines established by the Sentencing Commission relating to parole proceedings, release, and recommitment.

Section 2. (page 2-4):

- Amending 61 P.S. § 331.3 (chairman of the board) to make clear that the chairman directs the management and administration of PBPP and its proceedings to ensure efficient and timely decisions.
- Amending 61 P.S. § 331.4 (quorum; number authorized to act; appeal) to authorize parole decisions in accordance with the RRRI program (44 Pa.C.S.A. Ch. 53) and adding a new subsection (e) to permit streamlined procedures for RRRI parole decisions.

Section 3. (page 4) amending 61 P.S. § 331.16a(a) to authorize PBPP to provide information to the Sentencing Commission.

Section 4. (page 4-7) amending 61 P.S. § 331.17 (powers of board respecting parolees; supervision of persons placed on probation; sentenced for less than two years excepted) as followings.

- Creating a new subsection (a) that contains existing law but now makes clear that PBPP parole powers do not extend to person committed to the county prison under the new place-of-confinement provisions that take effect in 3 years (42 Pa.C.S.A. § 9762(B)(2)). (Note: these provisions mean that, in three years, parole jurisdiction will be based on place of confinement with judges controlling parole decisions in the county jail and PBPP controlling parole decisions for prisoners in DOC.)
- Creating a new subsection (b) that:
  - makes clear that judges may parole prisoners confined to the county prison under the new place-of-confinement provisions that take effect in 3 years (42 Pa.C.S.A. § 9762(B)(2));
  - requiring notice to crime victims of a “personal injury crime” and an opportunity to prepare a “preparole statement;”
  - requiring the DA to notify victims after sentencing of right to submit this statement;
  - making clear that victims have the obligation to notify the court of their intent to submit this statement;
  - making these statements confidential;
  - requiring courts to report parole and reparole decisions to the Sentencing Commission.
- creating a new subsection (c) that contains the current aggregation statutory provisions that determine parole jurisdiction.

Section 5. (pages 7-12) amending 61 P.S. § 331.21 follows:

- Subsection (a): making clear that PBPP parole decisions will be subject to the new parole guidelines;
- Subsection (a.1): when PBPP deviates from the new guidelines, it must provide a contemporaneous statement of the reasons for the deviation; PBPP may develop and use its own decisional instruments; this subsection doesn't prevent PBPP from developing other forms, policies, and procedures consistent with this Act.
- Subsection (a.2) (administrative parole):
  - i. permitting "eligible offenders" (same definition as RRRI—see 7(e) *infra*) to be placed on "administrative parole after 1 year of parole supervision if no violations or extensive use of sanctions and no substantial information indicating dangerousness.
  - ii. Making clear that offenders on administrative parole are subject to recommitment and reparole.
  - iii. Requiring offender on administrative parole to have supervision contact at least once a year, provide update contact information, pay restitution, comply with any other board requirements.
- Subsection (a.3): board required to comply with RRRI requirements,
- Subsections (b) and (b.1) (no changes in existing provisions found in 61 P.S. § 331.21 (b) and (b.1)).
- Subsection (b.2)
  - 1) Requiring DOC to identify prisoners meeting the definition of "eligible offender."
  - 2) Requiring DOC to notify PBPP of the prisoners identified; PBPP to notify DA and court (by mail or electronic means if DA and court have consented to electronic notification) six month prior to expiration of the minimum sentence.
  - 3) DA and court have 60 days to object to DOC and PBPP to determination that prisoner is an "eligible offender."
  - 4) If no objection PBPP shall approve parole if it finds:
    - i. Good conduct record and prisoner is still an "eligible offender";
    - ii. Adequate reentry plan;
    - iii. PBPP has established individualized parole conditions;
    - iv. No reasonable indication that prisoner poses a risk to public safety.
  - 5) If court or DA objects to determination that prisoner is an "eligible offender", PBPP makes determination as to whether he is an "eligible offender" and notifies DOC. If "eligible offender" RRRI parole procedures apply; otherwise, traditional parole procedures apply.
  - 6) Nothing in this section grants a right of parole to any person; PBPP decision is not treated as an "adjudication" under laws relating to judicial review of Commonwealth agency action.
  - 7) Except as otherwise provided in this section, powers and duties of PBPP not affected.

- Subsection (c): making clear that PBPP must consider recommitment ranges that will be established by the Sentencing Commission guidelines.
- Subsection (c.1): where PBPP deviates from recommitment guidelines established by the Sentencing Commission, it must provide a contemporaneous written statement of reasons.
- Subsection (d): no changes in existing law.
- Subsection (e) defining eligible offender using RRRI definition.

Section 6. (page 13) amending 61 P.S. § 331.21a(c) requiring that male PBPP parole violators be returned to nearest state correctional institution and female violators be returned to SCI-Muncy or other state correctional institution designated by DOC.

Section 7. (pages 14-17) amending 61 P.S. § 331.22a in the following subsections:

- Subsection (4) is amended to make clear that, unless otherwise required by law, victim impact statements submitted to PBPP are confidential, not subject to subpoena or discovery, cannot be introduced in a judicial or administrative proceeding, and may not be released to the prisoner. This subsection also precludes persons from having access to records under this section from disclosing them without the written consent of the victim.

Section 8. (page 17) Effective date: 60 days (11/24/08).

## Act 84 (HB 7): Section-by-Section Analysis

Section 1. (pages 1-9) striking all of 61 P.S. § 81 (illness of prisoner; removal for treatment) and substituting the following:

- Section 1. (removal)
  - (a) DOC prisoners: DOC or the prisoner may petition to “temporarily defer service of the sentence of confinement” and to “temporarily remove” the prisoner from DOC custody for placement in a “hospital, long-term nursing care facility, or hospice care location” (as defined in the subsection (f)) and:
    - 1) Sentencing court may approve petition for hospital or nursing care facility under electronic monitoring if all of the following apply--
      - i. medical needs of prisoner “more appropriately addressed” there;
      - ii. facility agreed to accept prisoner;
      - iii. prisoner “seriously ill” and not expected to live more than 1 year
      - iv. to writs or detainees;
      - v. no undue escape risk (looking at conduct record, whether convicted of a crime of violence, length of imprisonment, and any other “relevant factor);
      - vi. facility agreed to notify DOC of material changes (health status, nature of care, or other information requested by DOC); and
      - vii. notice and opportunity to be heard by prosecuting agency, state or local prison, and victim.
    - 2) Sentencing court may approve petition for hospice care facility placement under basically the same standards as 1), and if the hospice care provider can provide appropriate “medical services and palliative care.”
    - 3) Order entered under this section must include a provision that DOC or prosecutor may petition for recommitment of the prisoner if changed or previously unknown circumstances (including change in medical status, risk of escape, danger to community, or change in case provided).
    - 4) Sentencing court may terminate its order. A prisoner taken into custody pursuant to an order (detention or recommitment) shall be delivered to the nearest state correctional facility.
  - (b) Prisoners in other facilities (including county jails)—judge committing prisoner to that facility may enter the same type of orders described in (a) based on clear and convincing evidence of consent, proof of requirements in (a)(1) or (a)(2), order includes provisions described in (a)(3). Court may terminate order, and prisoner taken into custody should be returned to the institution where he was previously confined.
  - (c) Service.--Petition must be served on each agency representing the Commonwealth at each proceeding that resulted in the commitment/detention order. Each party has opportunity to object and be heard. Court must ensure victim notification. All parties entitled to copy of final order.

- (d) Notice.—person in charge of the hospital/nursing care facility/hospice care location must provide notice of order to persons who will come in contact with the prisoner during the placement. Court will forward copy of the order to the facility and DPW.
  - (e) Petition Requirements: name of facility proposed for placement and facts showing that the facility has agreed to accept the prisoner.
  - (f) Definitions.
- Section 2. Replacing 61 P.S. § 82 (escape of prisoner removed from treatment) with (removal from placement) that provides that person placed in facility pursuant to this act who removes himself from the facility is subject to arrest and may be convicted of criminal contempt.
  - Section 3. Effective date. 60 days (11/24/08).