

VICTIM IMPACTS OF PA Acts 81, 83, and 84 of 2008  
THE COMPREHENSIVE PRISON PACKAGE

MAJOR PROVISIONS WHICH IMPACT VICTIMS AND VICTIM SERVICES

The provisions of these Acts impact victims of crime and those agencies which serve victims by expanding and defining legislated victims' rights within the criminal justice system.

1) **Parole for state and county sentenced inmates:**

**a) Parole Guidelines.**

- i) With the passage of the Act 83, the Pennsylvania Sentencing Commission, which is responsible for setting sentencing guidelines, has been charged with promulgating parole guidelines for the Pennsylvania Board of Probation and Parole (PBPP) and for the courts.
  - (1) These parole guidelines must make public safety and victim safety the primary consideration in parole decisions and utilize validated risk assessment tools and evidence-based practices.
  - (2) They must provide for due consideration of victim input.
  - (3) THE COMMONWEALTH VICTIM ADVOCATE, AMONG OTHERS, IS ADDED TO THE SENTENCING COMMISSION AS AN EX OFFICIO MEMBER TO ADVISE ON THIS PROCESS AND GOING FORWARD.
  - (4) Written guidelines provide an opportunity for prosecutors, victim/witness coordinators and victim advocates to provide more concrete information to victims about parole.
    - (a) Misinformation and misunderstandings about when inmates are eligible for parole is a significant problem voiced by victims during the post sentencing phase of services:
      - (i) They are often surprised and angered upon being:
        - 1. Notified for the first time that the inmate is being considered for parole (or pre-release), believing instead that more time should have passed before the inmate would be eligible. This is particularly true when there is a short minimum date.
        - 2. Informed that the inmate will likely be considered for parole (and prerelease) on an on-going basis, annually if not semi-annually, believing instead that if and when parole is denied once, the inmate will serve his full term.
      - (ii) Victims often express that they did not comprehend the information on sentencing and parole provided to them at the time of sentencing or at plea discussions.
      - (iii) Victims sometimes express that they have been told that inmates must serve 85% of their maximum sentence.

**2) Sentencing and parole of state sentenced inmates:**

**a) Recidivism Risk Reduction Incentive Program (RRRI) - victim notice and input:**

- i) Act 81 creates the RRRI, which enables certain defendants to become eligible for parole, based on a formula, prior to their true minimum sentence release date.
  - (1) Prior to Act 81, all state sentenced offenders could not be paroled prior to their minimum sentence.
- ii) The RRRI program was enacted to create incentives for certain non violent offenders to participate in evidence-based programs proven to reduce recidivism.
- iii) Inmates sentenced to RRRI must complete specific programs within the Pennsylvania Department of Corrections (DOC), have positive adjustment to prison, and have an adequate reentry plan.
- iv) RRRI minimum sentence is determined by the court at the time of sentencing.
- v) Generally only non-violent offenders are eligible for RRRI:
  - (1) Those who are not being sentenced for nor have at any time been convicted of a personal injury crime and certain other offenses, or
  - (2) Those who do not demonstrate a history of past or present violent behavior.
- vi) RRRI WAIVER AND VICTIM IMPACT:
  - (1) **THE PROSECUTOR HAS THE SOLE DISCRETION TO WAIVE ELIGIBILITY REQUIREMENTS, AND REQUEST THAT THE COURT CONSIDER AN OTHERWISE INELIGIBLE OFFENDER FOR THE RRRI SENTENCE.**
    - (a) **THE VICTIM MUST BE NOTIFIED BY THE PROSECUTOR OF HIS/HER INTENT TO WAIVE THE ELIGIBILITY REQUIREMENTS AND TO ASK THE COURT TO SENTENCE AN OTHERWISE INELIGIBLE OFFENDER TO RRRI.**
    - (b) **THE VICTIM HAS A RIGHT TO ADDRESS THE COURT ON THE PROSECUTOR'S REQUEST FOR A WAIVER.**
      - (i) **THIS RIGHT DIFFERS FROM THE VICTIM'S RIGHT FOR PRIOR COMMENT TO THE PROSECUTOR ON PLEA AGREEMENTS, IN THAT WITH RRRI THE VICTIM'S RIGHT TO COMMENT IS MADE DIRECTLY TO THE COURT.**
      - (ii) **ONLY AFTER CONSIDERATION OF THE VICTIM'S INPUT, IF THE VICTIM CHOOSES TO PROVIDE THAT INPUT, MAY THE COURT ACCEPT OR REFUSE THE PROSECUTOR'S REQUESTED WAIVER OF ELIGIBILITY.**
      - (iii) ***Just as procedures have been developed by victim/witness programs to inform and assist victims with impact statements, similar services will need to be developed to assist victims with this input right.***

- (2) IF THE COURT DECIDES TO SENTENCE THE OFFENDER TO RRRI, THE VICTIM IS TO BE NOTIFIED OF THE MINIMUM AND MAXIMUM SENTENCE, AND ALSO OF THE RRRI MINIMUM SENTENCE DATE, OR EARLY PAROLE DATE CALCULATED BY FORMULA.
  - (a) THIS INFORMATION IS TO BE INCLUDED IN THE SENTENCING ORDER.
- (3) ELIGIBLE VICTIMS ARE ABLE TO REGISTER FOR NOTIFICATION AND INPUT SERVICES THROUGH THE OFFICE OF THE VICTIM ADVOCATE (OVA) FOR OFFENDERS SENTENCED TO RRRI.
  - (a) EVEN THOUGH THE RELEASE OF THE OFFENDER AT THE RRRI MINIMUM DATE IS LIKELY AS LONG AS THE OFFENDER HAS COMPLETED THE PROGRAM REQUIREMENTS, AND NO NEW EVIDENCE OF OTHER VIOLENT CRIMES HAS COME TO LIGHT, CONDITIONS OF PAROLE MAY BE IMPACTED BY VICTIM INPUT.

- 3) **Parole of state sentenced inmates by the PBPP:**
- a) **Administrative Parole (victim restitution provision)**
    - i) Certain classes of non-violent offenders who successfully comply with the terms of their first year of parole supervision may be placed on administrative parole.
    - ii) Administrative parole is the lowest level of parole supervision.
      - (1) Offenders, who are placed on parole after serving a sentence for a personal injury crime and certain other crimes, are not eligible for administrative parole.
      - (2) Administrative parole enables the parolee to report to the parole agent once a year at minimum.
      - (3) To remain on administrative parole, the parolee must comply with all parole requirements or conditions., and
      - (4) AS SPECIFIED IN ACT 83, AND IMPORTANT FOR VICTIMS, IN ORDER TO REMAIN ON ADMINISTRATIVE PAROLE, THE PAROLEE MUST CONTINUE TO PAY ANY RESTITUTION OWED.
        - (a) *Victim/Witness coordinators or others assisting victims with restitution payment problems involving an offender on state parole, including those on administrative parole, should contact the parole agent, or the Office of the Victim Advocate for assistance*

**b) Rebuttable Parole of state sentenced inmates by PBPP (victim notification and input)**

- i) Act 83 allows the parole release of certain less violent offenders at their minimum sentence date without a standard parole hearing.
  - (1) Rebuttable parole presumes that parole will occur for eligible inmates unless an aggravating factor is identified.
    - (a) Inmates eligible for rebuttable parole are not subject to review by Board members, or a Board hearing, to determine if they are to be paroled.
    - (b) These inmates must have met pre-established criteria and completed prison programming.
    - (c) They may not be serving time for a personal injury crime and certain other crimes.
  - (2) After commitment of the inmate to the DOC, the District Attorney and the court are notified of and may object to the inmate's eligibility for rebuttable parole.
  - (3) VICTIMS REGISTERED WITH THE OVA FOR THESE INMATES RETAIN THE RIGHT TO NOTIFICATION AND TO PROVIDE INPUT.
    - (a) THEIR INPUT WILL BE CONSIDERED IN THE CONTEXT THAT THE PAROLE IS PRESUMED, AND FOR RELEVANT CONDITIONS OF PAROLE.
      - (i) A FEW EXAMPLES OF PAROLE CONDITIONS ARE
        - 1. NO CONTACT ORDERS,
        - 2. GEOGRAPHIC LOCATION RESTRICTIONS,
        - 3. MANDATORY RESTITUTION PAYMENTS.

**4) State Intermediate Punishment (SIP) Re-sentencing requests by the Department of Corrections (DOC) (victim notification):**

- a) SIP is a flat 24-month sentence, with a graduated release of the inmate back into the community, where the offender remains under the supervision of the DOC.
- b) Once in the community, these inmates are not on parole, but are serving their SIP sentence at a community based treatment facility.
- c) Inmates convicted of personal injury crimes and certain other crimes are not eligible for SIP.
- d) Act 81 now amends the law described above by adding provisions which enable the Department of Corrections to request the court to reconsider and resentence eligible inmates within a year of sentencing, for State Intermediate Punishment. This is a new process to prior law.
- e) SINCE VICTIMS HAVE A RIGHT UNDER THE CRIME VICTIMS ACT TO SUBMIT AN IMPACT STATEMENT WHICH IS TO BE CONSIDERED BY THE COURT, AND A RIGHT OF NOTIFICATION OF RE-SENTENCING, VICTIM SERVICES WILL NEED TO BE DEVELOPED AROUND THIS DOC REQUEST FOR SIP.
  - i) *Just as procedures have been developed by victim/witness programs to inform and assist victims with impact statements at sentencing, similar services will need to be developed to assist victims with these notification and input rights.*
- f) WHEN THE DOC NOTIFIES THE PROSECUTOR OF THEIR REQUEST TO RESENTENCE THE INMATE, AND MAKES THE REQUEST OF THE COURT, THE OFFICE OF THE VICTIM ADVOCATE WILL SIMULTANEOUSLY NOTIFY ANY VICTIMS REGISTERED WITH OVA CONCERNING THIS INMATE AND REFER THEM TO THE LOCAL VICTIM/WITNESS PROGRAM FOR ASSISTANCE.
- g) VICTIMS REGISTERED WITH THE OFFICE OF THE VICTIM ADVOCATE WHOSE OFFENDERS ARE RE-SENTENCED TO SIP, ARE ELIGIBLE FOR OFFENDER RELEASE NOTIFICATION SERVICES.

**5) County Prisoner Work Release (victim notice and input):**

- a) Act 81 amends the law enabling judges at sentencing or any time afterward, to make prisoners serving less than 5 years in a county jail, eligible for work release, set conditions and revoke work release.
  - i) Judges are also responsible for ensuring that both the prosecutor and the victim are then provided notice of the offender's subsequent petition for work release and have an opportunity to be heard on the petition.
- b) The law then gives county jails the final say on whether a county prisoner may be released, detained or recommitted.
- c) FOR VICTIMS THE LAW SPECIFIES THAT:
  - i) VICTIMS, WHO ARE ELIGIBLE FOR SENTENCING NOTIFICATION AS PER THE CRIME VICTIMS ACT, MUST ALSO BE NOTIFIED THAT THE COURT HAS DETERMINED THAT THE OFFENDER MAY BE ELIGIBLE FOR WORK RELEASE.
    - (1) ACCORDING TO THE CRIME VICTIMS ACT,
      - (a) (11.213.f (1)) "THE PROSECUTOR'S OFFICE SHALL PROVIDE .... UPON REQUEST OF THE VICTIM, NOTICE OF THE DISPOSITION AND SENTENCE OF AN ADULT, INCLUDING SENTENCE MODIFICATION."
        - (i) NOTE THAT THIS STATES THAT IN ORDER TO RECEIVE NOTICE OF THE DISPOSITION AND SENTENCE OF AN ADULT, INCLUDING SENTENCING MODIFICATIONS, VICTIMS MUST HAVE REQUESTED SUCH NOTICE FROM THE PROSECUTOR'S OFFICE.
    - ii) WHENEVER AN ELIGIBLE OFFENDER SUBMITS AN APPLICATION (PETITION) FOR WORK RELEASE, VICTIMS MUST BE NOTIFIED AND GIVEN A REASONABLE OPPORTUNITY TO BE HEARD ON THE APPLICATION.
      - (1) VICTIMS MUST BE REGISTERED IN ORDER TO BE NOTIFIED AND PROVIDE INPUT.
      - (2) *Just as procedures have been developed in the county to inform and assist victims with their rights to be heard during sentencing, similar services will need to be developed to assist victims with these notification and input rights. This may include defining roles for the victim/witness coordinators, prosecutors, courts, and wardens.*

**6) County Prisoner Early Parole (victim notice):**

- a) Act 81 enables the court to parole a defendant prior to the expiration of his/her minimum sentence under certain circumstances:
  - i) The maximum sentence is less than 2 years
  - ii) The defendant was made eligible to participate in a reentry plan at time of sentencing
  - iii) The court provided the prosecutor at least 10 days notice and an opportunity to be heard before granting the parole
- b) **WHETHER THE OFFENDER IS ELIGIBLE FOR EARLY PAROLE MUST BE CONTAINED WITHIN THE SENTENCING ORDER. VICTIMS ARE TO BE INFORMED OF THIS.**
  - i) *Victim/witness programs may want to consider*
    - (1) *If victims are informed by letter, developing new language for correspondence regarding sentences which addresses early release, or*
    - (2) *If victims are informed in person, procedure to ensure that early release is discussed with all relevant victims.*



**7) CONFIDENTIALITY FOR CRIME VICTIMS**

- a) ACT 83 CLARIFIED CONFIDENTIALITY PROVISIONS FOR CRIME VICTIMS WHO
  - i) ARE SERVED BY THE OFFICE OF THE VICTIM ADVOCATE, OR
  - ii) AS OF SEPTEMBER 2011, WILL BE PROVIDED PAROLE NOTIFICATION AND INPUT RIGHTS AND SERVICES FOR CERTAIN INMATES TO BE PAROLED BY THE COUNTY COURTS.
- b) THE ACT DELINEATES CONFIDENTIALITY PROVISIONS TO THE CURRENT LAW WHICH MAKE ANY AND ALL STATEMENTS OR TESTIMONY OF THE VICTIM OR FAMILY MEMBERS SUBMITTED FOR PAROLE CONSIDERATION, INCLUDING ADDRESS, PHONE NUMBER OR PERSONAL INFORMATION, TO BE:
  - i) DEEMED CONFIDENTIAL AND PRIVILEGED
  - ii) NOT BE SUBJECT TO SUBPOENA OR DISCOVERY
  - iii) NOT BE INTRODUCED INTO EVIDENCE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING
  - iv) NOT BE RELEASED TO THE PRISONER
- c) NO PERSON WHO HAS ACCESS TO THESE REPORTS OR RECORDS OR OTHER INFORMATION SHALL DISCLOSE THE CONTENT OR TESTIFY IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING WITHOUT THE WRITTEN CONSENT OF THE VICTIM.
- d) *Victim/witness programs, in conjunction with the courts and prosecutors, as they determine their relevant roles in carrying out these new rights, may wish to develop policy and procedures to ensure this right, as well as to inform victims of the confidentiality of this information.*

**8) Medical Release from DOC jurisdiction (victim input and notification)**

- a) Act 84, enables judges to place inmates serving state or county sentences, who are determined to be seriously or terminally ill, into hospitals, long-term nursing care facilities or hospice care locations, which may include an individual's home.
- b) In order to place a seriously or terminally ill inmate into a medical facility, a petition must be filed with the sentencing court by
  - i) The prisoner, or
  - ii) A person to whom the court grants standing to act on behalf of the prisoner, or
  - iii) The Department of Corrections if the inmate is sentenced to serve state time, or
  - iv) The county jail if the inmate is serving a county sentence.
- c) Among the requirements that enable the sentencing court to approve the petition are:
  - i) The medical needs of the prisoner can be more appropriately addressed in the medical facility.
  - ii) The facility has agreed to accept the prisoner and provide care.
  - iii) The prisoner is
    - (1) seriously ill and expected to not live for more than one year, or
    - (2) terminally ill, not ambulatory and likely to die in the near future
  - iv) There would be no undue risk of escape or danger to the community.
  - v) The hospital, or long-term nursing or hospice facility must agree to notify the DOC or jail and court if there are material changes in the health of the prisoner.
- d) The petition requests that the court "temporarily defer service of the sentence of confinement and temporarily remove the prisoner"
  - i) The prisoner is no longer under the jurisdiction of the DOC or county jail, nor serving time (or getting credit) under his/her sentence.
  - ii) If a prisoner is placed into a medical facility he will be subject to electronic monitoring.
  - iii) A prisoner who removes himself from the medical facility is subject to arrest and if convicted, guilty of criminal contempt.
- e) WHEN A PETITION IS FILED, THE PROSECUTOR'S OFFICE, STATE OR LOCAL CORRECTIONAL FACILITY, AND ANY REGISTERED VICTIMS OF CRIMES AGAINST WHOM THE OFFENDER IS CURRENTLY COMMITTED OR SERVING TIME MUST BE GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD.
- f) VICTIM IMPACT:
  - i) REGISTERED VICTIMS OF OFFENDERS FOR WHICH A PETITION HAS BEEN FILED, WHETHER THAT OFFENDER IS SERVING TIME IN THE STATE OR A LOCAL FACILITY, MUST BE
    - (1) NOTIFIED OF THE PETITION
    - (2) GIVEN AN OPPORTUNITY TO BE HEARD
    - (3) RECEIVE A COPY OF THE FINAL ORDER ADJUDICATING THE PETITION.

- ii) THE COURT IS RESPONSIBLE FOR ENSURING THAT ANY CRIME VICTIMS ENTITLED TO NOTIFICATION BY THE CRIME VICTIMS ACT HAVE BEEN GIVEN NOTICE AND THE OPPORTUNITY TO BE HEARD ON THE PETITION.
  - (1) NOTE THAT THE ACT DOES NOT DEFINE WHO IS RESPONSIBLE FOR PROVIDING THE NOTIFICATION TO THE VICTIMS AND OTHER PARTIES.
  - (2) *Just as procedures have been developed by victim/witness programs to inform and assist victims with impact statements at sentencing, similar services will need to be developed to assist victims with this input right for comment to the sentencing court on the petitions.*
  - (3) *Just as local correctional facilities and victim/witness offices have developed notification services for registered victims on inmate release, similar services will need to be developed to register and notify victims of these petitions.*
- iii) IF THE OFFICE OF THE VICTIM ADVOCATE IS NOTIFIED OF ANY PETITIONS, REGARDING INMATES WITH REGISTERED VICTIMS, OVA WILL NOTIFY THE VICTIMS OF ANY RELEVANT PETITIONS AND REFER THEM TO THE LOCAL VICTIM WITNESS PROGRAM FOR ASSISTANCE IN SUBMITTING THEIR COMMENTS TO THE SENTENCING COURT.
- g) The hospital, long-term care nursing facility or hospice care location where a prisoner is placed must notify the following individuals of the prisoner's placement:
  - i) Each person receiving care at the facility who may come into contact with the prisoner
  - ii) Each employee or contractor who may come into contact with the prisoner

**9) Place of Confinement and Parole Jurisdiction amendments effective in three years, (September 25, 2011)**

**a) Place of Confinement of Sentence (Act 81)**

- i) The state DOC would house prisoners serving sentences of a maximum of 2 or more years
- ii) Under limited circumstances, prisoners serving between a maximum of between 2 to 5 years could serve that time in the county as long as
  - (1) The county jail administrator has certified that there is room in the jail and the population is less than 110% of the rated capacity
  - (2) The DA and the court consent
- iii) Prisoners sentenced to less than two years would serve that time in the county
- iv) Prisoners sentenced to more than 5 years would serve that time in the state DOC

**b) Parole Jurisdiction (victim input and notice)**

- i) Currently the PBPP is responsible for making parole decisions concerning “state” inmates serving time in the county prisons (those serving between a maximum of between 2 and 5 years) as well as all inmates eligible for parole serving time in the DOC facilities.
- ii) When the place of confinement amendments become effective in three years, the PBPP will no longer be responsible for decisions concerning inmates serving a maximum of between 2 to 5 years in the county facilities,
  - (1) This responsibility will shift to judges.
  - (2) VICTIM IMPACT:
    - (a) CURRENTLY REGISTERED VICTIMS OF PERSONAL INJURY CRIMES WHOSE OFFENDERS ARE SERVING STATE TIME IN COUNTY JAILS ARE PROVIDED NOTIFICATION AND INPUT RIGHTS AND SERVICES BY THE OFFICE OF THE VICTIM ADVOCATE.
    - (b) IN 2011, WHEN THE NEW CONFINEMENT PROVISIONS BECOME EFFECTIVE, AND THE COURT MAKES PAROLE DECISIONS, THE RESPONSIBILITY FOR PROVIDING THESE SERVICES TO REGISTERED VICTIMS OF PERSONAL INJURY CRIMES WILL SHIFT TO THE COURT. (ACT 83)
      - (i) The inmate must have been sentenced to a maximum of between 2 to 5 and serving time in a county jail.
      - (ii) The crime must be a personal injury crime as defined by the Crime Victims Act.
      - (iii) THE DISTRICT ATTORNEY IMMEDIATELY FOLLOWING SENTENCING OF THE OFFENDER, MUST NOTIFY THE VICTIM OF THEIR OPPORTUNITY TO SUBMIT A **PREPAROLE STATEMENT** TO THE COURT.

- (iv) THE MEANING OF “VICTIM” IS THE SAME AS DEFINED IN THE CRIME VICTIMS ACT, WITH THE ADDITION OF MEANING A MEMBER OF THE VICTIM’S FAMILY IF THE VICTIM IS INCAPABLE OF COMMUNICATING OR HAS DIED.
- (v) THE VICTIM MUST NOTIFY THE COURT OF THEIR INTENTION TO SUBMIT SUCH A STATEMENT (REGISTER).
- (vi) THE VICTIM MUST PROVIDE AND KEEP CURRENT THEIR MAILING ADDRESS.
- (vii) The registered victim must be given an opportunity by the court to submit a **PREPAROLE STATEMENT** to the court expressing concerns or recommendations regarding the parole or parole supervision of the inmate.
  - 1. *Just as procedures have been developed by victim/witness programs to inform and assist victims with impact statements, similar services will need to be developed in the county to assist victims with these input and notification rights.*
- (viii) PREPAROLE STATEMENTS PROVIDED BY VICTIMS ARE SUBJECT TO THE SAME CONFIDENTIALITY PROVISIONS AS THOSE FOR THE OFFICE OF THE VICTIM ADVOCATE.
  - 1. THESE CONFIDENTIALITY PROVISIONS WERE FURTHER DEFINED BY ACT 83.
- (ix) THE PREPAROLE STATEMENT(S) SUBMITTED BY VICTIMS MUST BE CONSIDERED BY THE COURT PRIOR TO ANY PAROLE DECISION.
- (x) EACH VICTIM WHO SUBMITS A PREPAROLE STATEMENT MUST BE GIVEN NOTICE OF THE COURT’S PAROLE DECISION.