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# 2010 Report to the Legislature

## Pennsylvania's Recidivism Risk Reduction Incentive Program

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*The Commission is an agency of the General Assembly affiliated with  
The Pennsylvania State University.*

## **PENNSYLVANIA'S RECIDIVISM RISK REDUCTION INCENTIVE PROGRAM 2010 LEGISLATIVE REPORT**

This is the Pennsylvania Commission on Sentencing's first Legislative Report on the Recidivism Risk Reduction Incentive [RRRI] Program. As the program was in its first year of operation during 2009, new procedures and policies were still being developed and implemented. Thus, only limited information on the sentencing and release of RRRRI offenders is available and presented in this report. Future reports will be able to include more complete information on the RRRRI offender, as well as be in a better position to address the other objectives provided by the legislature in the enactment of the RRRRI legislation.

### **LEGISLATIVE BACKGROUND OF RECIDIVISM RISK REDUCTION INCENTIVE [RRRI]**

The Recidivism Risk Reduction Incentive [RRRI] is a relatively new program designed to enhance public safety by providing eligible non-violent offenders the opportunity to participate in programs intended to reduce recidivism. Those offenders who successfully complete the program serve a reduced minimum sentence. The RRRRI program, which became effective on November 24, 2008, was part of a broader correctional reform package signed by Governor Rendell on September 25, 2008 [Act 81 of 2008]. The legislation's stated purpose for RRRRI was "to create a program that ensures appropriate punishment for persons who commit crimes, encourages prisoner participation in evidence-based programs that reduce the risks of future crime and ensures the openness and accountability of the criminal justice process while ensuring fairness to crime victims." [44 Pa. C.S.A. §5302].

### **STATUTORY ELIGIBILITY CRITERIA FOR RRRRI**

Act 81 of 2008 required that offenders receiving the Recidivism Risk Reduction Incentive must meet certain eligibility criteria [44 Pa. C.S.A. §5303]:

- Sentenced to state confinement.
- No history of violent behavior.
- Not convicted for an offense involving a deadly weapon or under the Firearms and Other Dangerous Articles Statute [18 Pa. C.S. Ch. 61].
- Has no current or prior conviction or juvenile adjudication for a personal injury crime as defined in the Crime Victims Act [P.L. 882, No. 111].
- Has no current or prior conviction or juvenile adjudication for the following:
  - incest [18 Pa.C.S. §4302]
  - open lewdness [18 Pa.C.S. §5901]
  - sexual abuse of children [18 Pa.C.S. §6312]
  - unlawful contact with a minor [18 Pa.C.S. §6318]
  - sexual exploitation of children [18 Pa.C.S. §6320]
  - internet child pornography [18 Pa.C.S. Ch. 76 Subch. C]
  - any offense that requires sex offender registration [42 Pa.C.S. §9795.1]
  - certain drug trafficking offenses subject to a mandatory sentence [18 Pa.C.S. §7508 (a) (1) (iii), (a) (2) (iii), (a) (3) (iii), (a) (4) (iii), (a) (7) (iii), or (a) (8) (iii)]
- Not awaiting trial or sentencing for other charges involving ineligible offense.

## SENTENCING TO RRRI

Statute requires that the sentencing judge makes the determination whether an offender is eligible for the RRRI incentive. The district attorney can elect to waive the eligibility requirements upon notification to the victim, though the court has the right to refuse the waiver. For those offenders deemed eligible for RRRI, the court imposes two sentences: 1) the 'regular' minimum and maximum sentence and 2) the RRRI minimum sentence [44 Pa. C.S.A. §5305].

The RRRI minimum sentence is based upon a percentage of the 'regular' minimum sentence: for minimum sentences three years or less, the RRRI sentence is three fourths of the minimum sentence; for minimum sentences over three years the RRRI is five-sixths of the minimum sentence. [The Sentencing Guidelines software, SGS WEB, was revised to automatically calculate the RRRI sentence for eligible offenders.]

After a RRRI offender has been sentenced to the Department of Corrections [DOC], the DOC utilizes validated assessment tools to determine the needs and risks of the offender. Based upon these assessment tools, a program plan is developed for the offender that is designed to lower the risk of recidivism.

## PAROLE OF THE RRRI OFFENDER

The offender is paroled upon expiration of the RRRI sentence upon the following conditions [44 Pa. C.S.A. §5306]:

- ✓ The DOC has certified that it conducted an appropriate assessment of the offender's needs and risks.
- ✓ The DOC has certified that a program plan designed to reduce recidivism was developed for the offender.
- ✓ The DOC informed the offender that he/she must successfully complete the program.
- ✓ The offender has successfully completed his/her program plan.
- ✓ The offender has maintained good conduct.
- ✓ The offender's reentry program is adequate.
- ✓ Conditions and requirements for parole have been established for the offender.
- ✓ Notice was provided by the Board of Probation and Parole to the sentencing judge and district attorney.
- ✓ The DOC certifies that the offender continues to be RRRI eligible.
- ✓ The offender poses no reasonable risk to public safety.

## LEGISLATIVE REPORTS

Act 81 of 2008, which provided for the RRRI program, included a mandate that the Department of Corrections, Board of Probation and Parole, and the Pennsylvania Commission on Sentencing monitor and evaluate the RRRI program to ensure that the goals and objectives of the legislation are being fulfilled. Additionally, in odd-numbered years, the Department of Corrections provides a report of its evaluation to the Judiciary Committees. In even-numbered years, the Commission on Sentencing provides its report to the Judiciary Committees. [44 Pa. C.S.A. §5310]:

The Department of Correction's report is to include:

- (i) "The number of offenders determined by the department to be eligible offenders under this chapter and the offenses for which the offenders were committed to the custody of the department.
- (ii) The number of prisoners committed to the custody of the department who were subject to a recidivism risk reduction incentive minimum sentence.
- (iii) The number of prisoners paroled at the recidivism risk reduction incentive minimum date.
- (iv) Any potential changes that would make the program more effective.
- (v) The six-month, one-year, three-year, and five-year recidivism rates for prisoners released at the recidivism risk reduction incentive minimum sentence.
- (vi) Any other information the department deems relevant."

The Commission's report is to include:

- (i) "Whether the goals of this chapter could be achieved through amendments to parole or sentencing guidelines.
- (ii) The various options for parole or sentencing guidelines under subparagraph (i).
- (iii) The status of any proposed or implemented guidelines designed to implement the provision of this chapter.
- (iv) Any potential changes to the program that would be likely to reduce the risk of recidivism of prisoners and improve public safety.
- (v) Any other information the Commission deems relevant."

## 2010 REPORT: THE NUMBER OF RRRRI OFFENDERS

The Commission's first report contains some initial baseline information on the number of RRRRI offenders who have been sentenced and released under the new law, based upon data received from the Department of Corrections and the Pennsylvania Board of Probation and Parole. Since the program is relatively new, the agencies are still in the process of developing a final RRRRI tracking system that will allow them to identify RRRRI offenders so that linkage of the data compiled by the Commission on Sentencing, the Department of Corrections, and the Board of Probation and Parole can be more easily accomplished. At this point, the tracking of RRRRI offenders from sentencing through parole is limited, and thus, the information presented in this report is likewise limited and should be viewed with caution.<sup>1</sup> In the coming year, the three agencies will be meeting to address this issue so that future reports will be able to provide a more complete picture of sentencing and release of the RRRRI offender.

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<sup>1</sup> See footnotes 2 and 3 on page 4.

Table 1 shows the 'flow' in the number of offenders who have been sentenced, certified, and released as a RRRRI offender, based upon the data received from the DOC and Parole Board.<sup>2</sup> We looked at the 'flow' first using only the DOC data [column one], and second using a subset of the DOC data that was merged with the Parole data [column two].

Table 1 indicates that there were 2,568 offenders received by the Department of Corrections between November 24, 2008 and December 20, 2009 who were identified as RRRRI eligible offenders. We next determined that there were 710 of these 2,568 offenders who were eligible for release under their RRRRI sentence as of December 20, 2009. Among those eligible for release, 19% [n=138] were certified by the DOC as RRRRI eligible after successfully completing their program plan. It should be noted that the majority of the offenders [67%] had pending certifications, while a smaller percentage [12%] had been decertified or had pending certification withdrawn status [2%].

Among the RRRRI certified offenders, 30% [n=42] had been released from prison; two offenders were released at their RRRRI minimum sentence. The average release date was four months after the RRRRI minimum sentence release date. Slightly more than half [55%] of the offenders were released before their regular minimum release date, though the average release date was less than one month prior to their regular minimum sentence release date.

Table 1 also provides the information outlined above based upon a subset of the DOC data that was merged with the Board of Probation and Parole data [column two], which contained information on RRRRI offenders interviewed for release as of October 31, 2009. In this subset of 218 RRRRI eligible offenders, there were 173 who were eligible for release as of December 20, 2009. Of the 173 offenders, 41% [n=71] were certified by the DOC as RRRRI eligible after successfully completing their program plan. Again, it should be noted that a large percentage of offenders [49%] were pending certification, while a smaller percentage [10%] had been decertified. Of those 71 RRRRI certified offenders,<sup>3</sup> 38% were released [n=27]; and again 2 offenders were released at their RRRRI minimum sentence. It should be noted that the most of the RRRRI certified offenders [89%] who were interviewed for release had been approved for release, though most had not yet been released.

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<sup>2</sup> We had originally intended to include the Pennsylvania Commission on Sentencing [PCS] data to identify those offenders who were sentenced under the new law. However, of the 5,087 offenders identified as RRRRI eligible in the PCS data, only 1,657 were identified in the DOC data as RRRRI eligible. We are currently in the process of trying to identify the reasons for the difference in the number of RRRRI eligible offenders between the two agencies. One contributing factor, according to staff at the Department of Corrections [DOC], is that the DOC has uncovered a programming flaw that inadvertently removed RRRRI identification status when an offender's pending RRRRI certification was changed. They are currently addressing this issue. A second contributing factor may be that offenders reported to the Sentencing Commission as RRRRI eligible may have later been found to be ineligible [e.g., determined to have history of violent behavior or other charges that involved ineligible offenses].

<sup>3</sup> Of the 136 offenders who were RRRRI certified by the DOC, 66 were not found in the Parole Board data. According to Parole Board staff, the major reason this occurred is that these cases had not been docketed as RRRRI interviews due to the newness of the program and the timing of docketing cases. As most of these occurred early in the program, it is anticipated that matches with the DOC will be more successful in the future.

**Table 1. The Number of RRRR Eligible Offenders.**

	<u>DOC data only</u>	<u>DOC and Parole data [subset]</u>
RRRR eligible [sentenced on or after 11/24/08]	2568 <sup>1</sup>	218
Eligible for RRRR min. release before 12/21/09	710 <sup>2</sup>	173 <sup>3</sup>
Certified by DOC as RRRR	138	71 <sup>4</sup>
Certified and Released from prison	42	27
<i>RRRR Minimum</i>		
released at RRRR minimum	2	2
released < 1 month after RRRR min	8	6
released 1-5 months after RRRR min	20	15
released 6-12 months after RRRR after RRRR min	9	3
released over 12 months after RRRR min	13	1
mean	4.1	3.0
<i>Regular Minimum</i>		
released before regular minimum	23	19
released after regular minimum	19	8
mean	< 1 month	< 1 month

1. There were 5,087 offenders with RRRR eligible sentences reported to the Pennsylvania Commission on Sentencing.
2. The average minimum sentence for these offenders is 8.7 months and the average RRRR minimum sentence is 5.4 months [There were 89 cases removed for this analysis as the RRRR release date and/or regular release date was before the sentence date].
3. The average minimum sentence for these offenders was 10.4 months and the average RRRR sentence was 7.0 months. [There were 10 cases removed for this analysis as the RRRR release date and/or regular release date was before the sentence date].
4. Of these 71 offenders, 67 had been interviewed for parole, and 60 had been approved for parole.

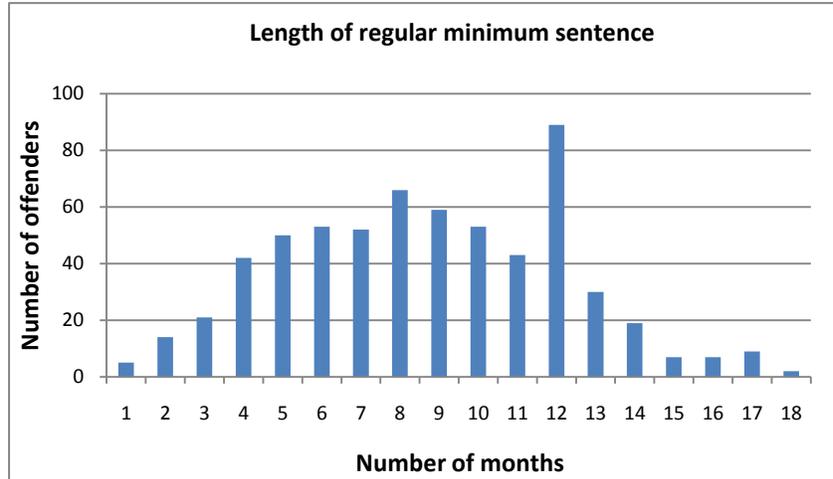
One issue raised by the information available thus far is that a number of offenders are being sentenced to the Department of Corrections with relatively short minimum sentences, which may preclude those offenders from completing their RRRRI program before their regular parole eligibility date. Additional analyses showed support for this concern. First, for the RRRRI offender, the average minimum 'regular sentence' was 8.7 months [Table 2] and the average minimum 'RRRI sentence' was 5.4 months [Table 3]. Second, about 7% of the offenders [n=32] were released pending RRRRI certification. Third, among those released, somewhere between 30% [DOC data and parole data merged] and 45% [DOC data only] were released after their regular parole date.

## **CONCLUSION**

This is the first report by the Pennsylvania Commission on Sentencing on the Recidivism Risk Reduction Incentive Program. Since 2009 was the first year of operation for this program, the information on the number of offenders sentenced, certified, and released under the RRRRI program is limited. There are, however, three major issues addressed in the report. First, at this point there is incomplete tracking information available on the RRRRI eligible offender. Second, based upon the limited information available, it appears that only a small number [2 out of 138 RRRRI certified offenders] have been released, thus far, at the expiration of their RRRRI minimum sentence. Third, a number of offenders are being sentenced to the Department of Corrections with relatively short minimum sentences, which could preclude them from completing their RRRRI program before their release eligibility date. The Pennsylvania Commission on Sentencing, the Department of Corrections, and the Board of Probation and Parole will be working together to improve the data management systems and to address the issue of the minimum amount of time necessary for offenders to complete RRRRI programming. More complete information will assist the Commission in being able to determine whether the RRRRI program is meeting its goals, and whether there will be any recommendations for change in future reports.

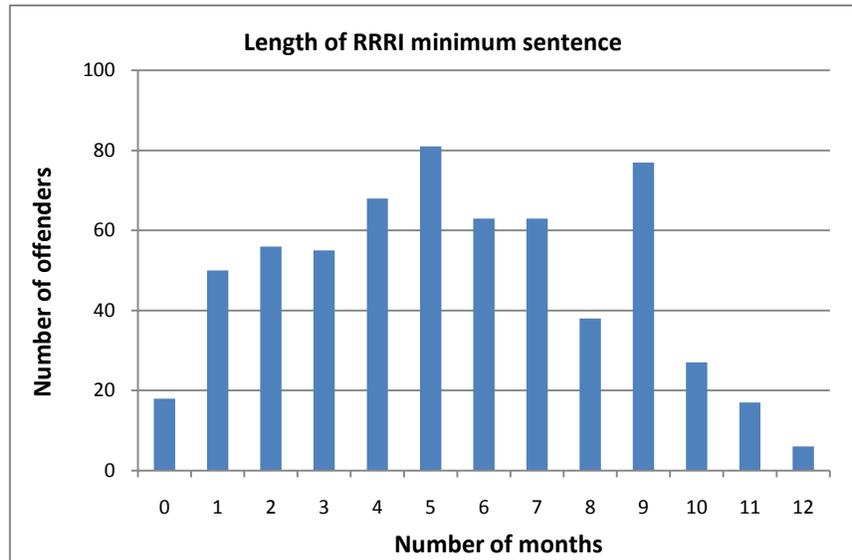
**Table 2. Length of regular minimum sentence for RRR eligible offenders [months] <sup>1</sup>**

Months	Number	Percent
1	5	0.8
2	14	2.3
3	21	3.4
4	42	6.8
5	50	8.1
6	53	8.5
7	52	8.4
8	66	10.6
9	59	9.5
10	53	8.5
11	43	6.9
12	89	14.3
13	30	4.8
14	19	3.1
15	7	1.1
16	7	1.1
17	9	1.4
18	2	0.3
Total	621	100.0
Mean	8.7	



**Table 3. Length of RRR minimum sentence for RRR eligible offenders [months] <sup>1</sup>**

Months	Number	Percent
0	18	2.9
1	50	8.1
2	56	9.0
3	55	8.9
4	68	11.0
5	81	13.0
6	63	10.1
7	63	10.1
8	38	6.1
9	77	12.4
10	27	4.3
11	17	2.7
12	6	1.0
13	2	0.3
Total	621	100.0
Mean	5.4	



1. There were 89 cases removed that had a RRR release date and/or regular release date that was before the sentence date.