



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Arizona Board of Executive Clemency

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Auditor General

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September 18, 2014

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Mr. Brian Livingston, Chair/Executive Director
Arizona Board of Executive Clemency

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the Arizona Board of Executive Clemency*. This report is in response to an October 3, 2013, resolution of the Joint Legislative Audit Committee and was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Executive Clemency agrees with all of the findings and plans to implement all of the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Debbie Davenport
Auditor General

Attachment

cc: Arizona Board of Executive Clemency Members

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Our Conclusion

The Arizona Board of Executive Clemency (Board) is responsible for granting parole to eligible inmates, revoking the parole/community supervision of violators, and recommending clemency actions to the Governor. In calendar year 2013, the Board made 317 parole decisions, 1,840 revocation decisions, and 55 clemency-sentence commutation, pardon, and reprieve decisions. We identified four areas where the Board can improve its operations. First, although the Board has strengthened its policies to help ensure that board members are free from conflicts of interest, additional steps are needed. Second, the Board should continue its efforts to develop a formalized, structured decision-making process so that its decisions are objective, consistent, and transparent. Third, the Board should continue its current efforts to better meet revocation hearing timeliness goals and victim notification requirements. Finally, the Board should develop and implement a transition plan to separate its board chair and executive director positions.



2014

Board should better ensure that its members are free from conflicts of interest

To help ensure the integrity of the Board's hearings and its decisions, it is important that board members remain free from personal and external impairments. However, an August 2013 Arizona Department of Administration and Governor's Office of Equal Opportunity joint investigation substantiated concerns related to conflicts of interest by the Board's former chair/executive director. During the audit, the Board approved three policies establishing ethical standards, guidelines governing board member conduct during hearings, and standards for when a board member should recuse him/herself.

Recommendations

The Board should:

- Develop a conflict of interest form that covers its conflict of interest policies, and have board members review and sign it periodically.
- Develop and implement formal conflict-of-interest training.

Board should further enhance its decision-making process

Best practices indicate that a structured decision-making (SDM) process promotes accurate, objective, consistent, and transparent decisions. The Board adopted such an approach in the early 1990s, but discontinued it in 2003 reportedly because of dwindling resources. Since January 2014, the Board has taken steps to reestablish its decision-making process for parole hearings around a structured approach that includes considering the nature and circumstances of the crime and an inmate's criminal and incarceration history. However, more remains to be done, including establishing decision-making guidelines for parole revocation hearings. To ensure its SDM model is effective and appropriate for use in Arizona, the model should incorporate best practices, including a validated risk-assessment tool; consideration of specific factors that correlate with recidivism such as an inmate's criminal and parole history, self-control, and plan for release; and a requirement to clearly document the Board's rationale for its decisions. The Board should also develop and implement policies and procedures that support and document its SDM process.

In addition, training is a critical component of an SDM process. Although board members receive training, board members who were interviewed identified deficiencies in the Board's training and indicated that they would benefit from additional training on how to make decisions. Therefore, the Board should ensure that its members receive adequate training on using its SDM model.

Recommendations

The Board should:

- Continue to develop and implement an Arizona-appropriate, structured decision-making approach that conforms to best-practice standards;

- Develop and implement policies and procedures that support the SDM process; and
- Ensure that board members receive adequate training on using its SDM model.

Board should continue taking steps to better meet hearing time frame goals and notification requirements

More than one-third of revocation hearings reviewed were untimely—Case law establishes a goal of holding a revocation hearing within 60 days after a parolee or individual on community supervision has been arrested and returned to the Arizona Department of Corrections' custody. However, we determined that 35 percent of the 1,118 revocation hearings conducted between January 2014 and May 2014 were, on average, 19 days later than the 60-day time frame goal. There are 2 reasons for the delay—it takes the Arizona Department of Corrections an average of 22 days to notify the Board for the need to hold a revocation hearing, leaving the Board only 38 days to schedule a hearing, and the Board sets its schedule a month in advance.

Some victim notifications were untimely—If so requested, statute requires the Board to provide victims written notification of parole or clemency hearings at least 15 days in advance of these hearings. The Board must also provide the victim written notification of its parole and clemency decisions within 15 days. However, the August 2013 Arizona Department of Administration and Governor's Office of Equal Opportunity joint investigation found that victims sometimes received untimely notifications under the former board chair/executive director. In addition, we found that the Board was at continued risk for not meeting notification requirements because of data system issues.

Board should continue and enhance efforts to address these issues—In April 2014, the Board established revocation hearing procedures to guide staff in scheduling these hearings and documenting information in the Arizona Department of Corrections' computer system. After audit work was completed, the Board developed and implemented similar procedures for parole and clemency hearings. The Board also has hired an administrator to provide monitoring and oversight.

Recommendations

The Board should:

- Continue to develop its hearing policies and procedures;
- Develop and implement a supervisory review process for key time frame goals and requirements;
- Ensure its staff are trained on its policies and procedures; and
- Collaborate with the Arizona Department of Corrections to identify ways to further improve the timeliness of parole/community supervision revocation hearings.

Board should separate the combined board chair and executive director positions

Beginning in 2004, the same person has served as the board chair and the Board's executive director, as allowed by statute. However, with the chair presiding over the Board's hearings, there is little time for the same person to oversee the Board's operations. In addition, the short 2-year board chair term can lead to frequent turnover of the Board's executive director position and potential instability in board operations. For fiscal year 2015, the Legislature appropriated sufficient money to permit the Board to hire an executive director by providing funding for the fifth board member.

Recommendation

The Board should develop and implement a transition plan for separating the board chair and executive director positions.

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INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona Board of Executive Clemency (Board) pursuant to an October 3, 2013, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq. This performance audit and sunset review focused on (1) the Board's controls for helping to ensure that board members are free from personal and external impairments to objective decision making; (2) the Board's decision-making process for parole and parole/community supervision revocation hearings; (3) the Board's compliance with hearing time frame goals and notification requirements for parole and parole/community supervision revocation hearings; and (4) the combined board chair and executive director positions. This report also includes responses to the statutory sunset factors.

Board considers inmates for early release and recommends clemency actions to the Governor

The Board is responsible for granting parole to eligible inmates incarcerated with the Arizona Department of Corrections, deciding whether to revoke parole or community supervision if offenders violate the terms of their release, and recommending clemency actions to the Governor (see textbox for Board's mission). Specifically:

- **Granting and revoking parole or community supervision**—Parole is a period of conditional supervised release outside of prison before an entire prison sentence is completed. When the Department of Corrections certifies an inmate as eligible for parole, the Board conducts a hearing and makes a determination as to whether releasing the inmate into the community before the expiration of his/her sentence would be in the best interest of the public (see textbox, page 2, for more information about the parole certification process). The Board makes parole decisions only for individuals who committed offenses before January 1, 1994; Arizona's truth-in-sentencing laws abolished parole for offenses committed on or after January 1, 1994, and instead the Department of Corrections is responsible for releasing inmates who have met the truth-in-sentencing requirements directly to community supervision.¹ According to the Department of Corrections, as of May 2014, there were 656 inmates who would be eligible for a parole hearing within the next 40 years. As indicated in the textbox on page 2, once the Department of Corrections certifies an inmate as eligible for parole, the prisoner remains parole eligible until parole is granted by the Board or parole eligibility is revoked by the Department of Corrections, and may appear before the Board for a parole hearing more than one time per year.

Board's mission—To ensure public safety by 1) considering and granting parole to inmates who are certified as eligible by the Department of Corrections and who appear not to pose a threat to society, and 2) by recommending to the Governor appropriate clemency actions.

In addition to hearing individuals' requests for parole, the Board is responsible for conducting revocation hearings for individuals on parole and community supervision who have been arrested. In these cases, the

¹ In 1993, Arizona adopted truth-in-sentencing laws that abolished discretionary release by a parole board for any offense committed after 1993 and require offenders to serve at least 85 percent of their sentence before becoming eligible for community supervision. The 85 percent requirement applies to both violent and nonviolent offenders. Prior to this change, prisoners were required to serve at least 67 to 75 percent of their sentences, depending on the offense, but typically became eligible for parole after serving one-half or two-thirds of their sentences. Truth in sentencing was adopted to promote truth and accountability in sentencing by requiring offenders to serve nearly all of their sentence.

Parole certification process

The Department of Corrections is responsible for certifying eligible prisoners for parole. Specifically:

- **1st certification**—The Department of Corrections must conduct the first certification 5 months before the prisoner's earliest parole eligibility date.
- **Parole hearing**—The Department of Corrections notifies the Board of the prisoner's eligibility, and the Board holds a parole hearing and decides whether the prisoner can be released on parole. The legal standards by which the Board determines an inmate's suitability for release on parole vary based on when the inmate was sentenced. There are no statutory requirements for how quickly this hearing must occur after the prisoner's certification.
- **Recertification**—Once the inmate is certified, he or she remains parole eligible until the date of release on parole. However, if the prisoner is denied parole, the Department of Corrections must recertify the prisoner not less than 1 nor more than 4 months after the hearing at which the prisoner was denied parole, except that the Board in denying parole may prescribe that the prisoner not be recertified for a period of up to 1 year after the hearing.

Source: Auditor General staff analysis of A.R.S. §31-411 and §41-1604.09.

Board determines whether the individual has violated his/her terms of supervision and decides whether it would be in the best interest of the public for an individual to remain on parole or community supervision or return to prison for the remainder of the sentence. According to the Department of Corrections, as of May 2014, there were nearly 5,300 offenders on parole or community supervision.

Most of the Board's actions address violations of existing parole or community supervision rather than granting of new parole. During calendar year 2013, the Board made 2,157 parole-related decisions, with only 317 involving requests for parole. The Board granted parole in about 23 percent of these cases (see Table 1). In the 1,840 decisions involving parole or community supervision violations, the Board revoked parole or community supervision approximately 93 percent of the time (see Table 2).

**Table 1: Parole hearing decisions
Calendar year 2013**

Parole decisions	
Denied (77%)	243
Granted (23%)	<u>74</u>
Total decisions	<u>317</u>

Source: Auditor General staff analysis of parole hearing decisions data between January 1, 2013 and December 31, 2013.

**Table 2: Revocation hearing decisions
Calendar year 2013**

Revocation decisions	
Revoked back to prison (93%)	1,702
Reinstated to parole or community supervision (7%)	<u>138¹</u>
Total decisions	<u>1,840</u>

¹ This number includes seven cases in which the Board found that the individuals were not in violation of their terms of community supervision. According to the Board, these individuals were reinstated to their original terms of parole/community supervision.

Source: Auditor General staff analysis of parole/community supervision revocation hearing decisions data between January 1, 2013 and December 31, 2013.

- Recommending clemency actions**—The Board is also responsible for recommending clemency actions to the Governor, such as sentence commutations, pardons, and reprieves (see textbox for more information on the types of clemency actions). If the Board votes in favor of clemency, it must forward its recommendation to the Governor for review and final decision. Sentence commutations are the most common type of clemency decisions, and are separated into two phases. In Phase I, the Board makes a determination as to whether the applicant meets the criteria for a clemency action. Phase I is completed without the presence of the offender. In Phase II, the Board conducts a hearing with the inmate present and votes on whether to recommend clemency to the Governor. During calendar year 2013, the Board made 354 Phase I clemency-sentence commutation decisions and passed 17 cases (5 percent) on to Phase II. In addition, the Board made 42 Phase II decisions in calendar year 2013 and recommended clemency-sentence commutation in 17 (40 percent) of these cases (see Table 3).¹ Finally, during calendar year 2013, the Board made 13 pardon and reprieve decisions, recommending only 2 pardons and no reprieves to the Governor.

Types of clemency hearings

Sentence commutation—Based on the Board’s recommendation, the Governor determines whether to change or modify a sentence imposed by the court.

Pardon—Based on the Board’s recommendation, the Governor determines whether to absolve a convicted felon of the legal consequence of his/her crime/conviction.

Reprieve—Based on the Board’s recommendation, the Governor may delay or temporarily suspend the carrying out of a punishment.

Source: Auditor General staff analysis of A.R.S. §§31-402 and information on the Board’s Web site.

Organization and staffing

According to A.R.S. §31-401, the Board consists of five Governor-appointed members. There were four board members as of July 2014. Board members serve for a 5-year term, and the Governor selects a chair from among the board members every 2 years. Since the mid-2000s, the board chair has also served as the Board’s executive director, as allowed by A.R.S. 31-401(K); however, the Board’s approved fiscal year 2015 State General Fund appropriation includes additional funding to separate the board chair and executive director positions (see Finding 4, pages 23 through 24, for a recommendation related to this separation). The chair and the other board members are counted in the Board’s appropriated full-time equivalent (FTE) positions. Statute requires that the

Table 3: Clemency-sentence commutation decisions Calendar year 2013

Phase I: Decision to move to Phase II clemency action	
Not moved to Phase II (95%)	337
Moved to Phase II (5%)	<u>17</u>
Total decisions	<u>354</u>
Phase II: Decision to recommend sentence commutation to Governor	
Not recommended (60%)	25
Recommended (40%)	<u>17</u>
Total decisions	<u>42¹</u>

¹ The total decisions made in Phase II differs from the number of Phase I moved to Phase II decisions because of timing issues.

Source: Auditor General staff analysis of clemency-sentence commutation hearing decisions data between January 1, 2013 and December 31, 2013.

¹ Auditors reviewed Department of Corrections’ data indicating the Governor’s agreement with board clemency recommendations for calendar years 2011 through 2013, and found that the Governor agreed with the Board’s recommendation about 34 percent of the time.

chair/executive director be paid a salary, while the other board members are paid on an hourly basis.¹

The Board was appropriated 14 full-time equivalent staff positions for fiscal year 2015; however, the Board is funded for only 12 positions, of which 11 were filled as of July 2014. In addition to the board chair/executive director and the board members, 7 other administrative staff assist in scheduling hearings, compiling hearing materials used by the Board when making release decisions, sending hearing notification letters, managing and maintaining inmate files, and completing dispositions and proclamations for board decisions.

Budget

The Board receives all of its funding from a State General Fund appropriation. As shown in Table 4, the Board's appropriation was approximately \$824,700 in fiscal year 2014. The Board's 2015 appropriation is an estimated \$958,600 and includes an increase of \$120,000 from fiscal year 2014 to separate the Board's chair and executive director positions by providing funding for a fifth board member, and to fill support staff positions within its current FTE authority. Personnel costs account for the majority of the Board's expenditures.

**Table 4: Schedule of revenues, expenditures, and changes in fund balance¹
Fiscal years 2013 through 2015
(Unaudited)**

	2013 (Actual)	2014 (Actual)	2015 (Estimate)
Revenues			
State General Fund appropriations	<u>\$ 824,105</u>	<u>\$ 824,730</u>	<u>\$ 958,600</u>
Expenditures			
Personal services and related benefits	584,193	621,863	762,200
Professional and outside services			22,500
Travel	164	235	6,400
Other operating	154,337	163,561	166,000
Furniture, equipment, and software	<u>85,411</u>	<u>39,071</u>	<u>1,500</u>
Total expenditures	<u>\$ 824,105</u>	<u>\$ 824,730</u>	<u>\$ 958,600</u>

¹ Fiscal year 2015 estimates are appropriated amounts that include \$120,000 appropriated to pay for a fifth board member so that the board chair and executive director positions may be separated and also for paying to fill a vacant support staff position. In addition, in fiscal year 2014 the Board did not fully expend its appropriated amounts.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2013; AFIS Management Information System *Status of Budget* screen for fiscal year 2014; and *State of Arizona Appropriations Report* for fiscal year 2015 estimates.

¹ Upon separation of the board chair and executive director positions, the board chair will no longer receive a salary, but will be paid on an hourly basis like the other board members as required by A.R.S. §31-401(B).

FINDING 1

The Arizona Board of Executive Clemency (Board) should continue its efforts to help ensure that board members are free from personal and external impairments to objective decision making. Impairments to objective decision making have led to investigations and legal challenges regarding board decisions. Most notably, in 2013, an investigation substantiated allegations of inappropriate behavior by the Board's former chair/executive director. During January through April 2014, the Board developed and implemented policies and procedures that are designed to help ensure board members are free from personal and external impairments. However, the Board should take additional steps to align its practices with recommended standards, including developing its own conflict-of-interest form and instituting a formal training process to ensure board members understand the Board's processes for identifying, managing, and resolving conflicts of interest.

Board should strengthen efforts to help ensure that its members are free from conflicts of interest

Board's impartiality was challenged

To help ensure the integrity of the Board's hearing process and decisions, it is critical that board members have the ability to reach fair, objective, and independent decisions. Although a fundamental aspect of objective decision making is that board members remain free from personal and external impairments, the Board's impartiality was challenged twice in 2013:

- In August 2013, a joint investigation conducted by the Arizona Department of Administration's Human Resources Division and the Governor's Office of Equal Opportunity substantiated several concerns regarding the Board's former chair/executive director, including concerns related to conflicts of interest. The investigation noted concerns regarding inappropriate contact with a family member of an inmate applying for commutation.¹ For example, according to the investigation, the Board's former chair/executive director joked with staff that he was provided basketball tickets by the family member, and the investigation found that a photograph of the former chair/executive director taken with the family member was posted on social media. The executive director who was involved in the investigation resigned on August 16, 2013.
- A second challenge, made in federal court on other cases, was dismissed. In 2013, two prisoners facing the death penalty filed a civil rights lawsuit against the Board alleging that they could not receive a fair and impartial hearing because the Board was being pressured by the Governor's Office to vote against clemency. However, the U.S. District Court judge who considered the case found that there was no evidence that the board members serving at the time were "unwilling or incapable of being objective or maintaining an open mind when they consider clemency applications."

¹ The inmate's commutation request was denied.

Board has established policies and procedures related to conflicts of interest but needs to do more

The Board has taken some steps to address conflict-of-interest issues, but needs to do more to ensure board members remain free from personal and external impairments to objective decision making. At the beginning of the audit, the Board did not have policies and procedures related to conflicts of interest or ethical behavior to guide its members or staff. In addition, the Board did not provide formal training for its board members regarding conflicts of interest. The Board's Assistant Attorney General stated that she provides the board members with a general discussion on conflicts of interest, but the discussion is not part of a formal board member training program. However, during the audit, the Board drafted and approved three policies that address various aspects of conflicts of interest and better ensures that board members are impartial and objective when reviewing and deciding parole and clemency cases. Specifically, the Board established:

- **Ethical standards policy**—In January 2014, the Board approved an ethical standards policy requiring that board members maintain high standards of honesty, integrity, confidentiality, and impartiality. This includes not discussing any facts related to a hearing when a quorum is present and reporting to the chairman of the Board if any attempts are made to persuade a member how to vote. The Board adopted this policy to hold board members accountable when conducting their official and personal affairs.
- **Hearing guidelines**—The Board approved board hearing guidelines in January 2014 that direct all board members to make their decisions independently, fairly, objectively, impartially, and without bias. Further, the guidelines indicate that board members should avoid words, phrases, and actions that could be understood to manifest bias or prejudice for or against an individual group.
- **Hearing recusal policy**—The Board approved a hearing recusal policy in April 2014 requiring board members to recuse themselves if participation in the hearing would violate or conflict with statutes, rules, and provisions within the State of Arizona employee handbook. In this policy, the Board provides specific examples for when a board member should recuse himself/herself, such as if the member has knowledge, information, or a relationship that would prevent him/her from participating in a fair, objective, and unbiased hearing.

To ensure its members are aware of and remain free from personal and external impairments, the Board should take the following additional steps:

- **Develop a conflict-of-interest form**—Although the Board started requiring board members and staff to sign a standard Arizona Department of Administration Declaration and Disclosure form in December 2013, this form focuses only on outside business conflicts and does not include the conflict-of-interest guidelines established in the policies and procedures the Board approved in 2014. In addition, board members review and sign the form only when appointed and do not reaffirm their understanding of the Board's policies

on a periodic basis, as recommended under conflict-of-interest guidelines.¹ Therefore, the Board should (1) develop its own conflict-of-interest form that covers the three policies and procedures it developed in 2014 and (2) develop a formal process for ensuring board members periodically, such as annually, review and sign the form.

- **Develop formal conflict-of-interest training**—Although the Board’s Attorney General Representative discusses conflicts of interest with board members, the Board should formalize this training to conform to recommended standards. According to the American Correctional Association (ACA) Standards, board members should receive annual formal training and education in a curriculum that is based on current job-related training needs.² In addition, conflict-of-interest guidelines indicate that public organizations should monitor and update their conflict-of-interest practices to ensure they remain effective and relevant.³ Therefore, the Board should (1) develop and implement formal training on the Board’s policies and procedures for identifying, managing, and resolving conflicts of interest and (2) ensure it periodically reviews and updates its conflict-of-interest policies and procedures and provides training on any changes made.

Board working to address potential conflicts of interest that might result from victim interactions

The Board should continue its efforts to prevent potential conflicts of interest by developing guidelines for its newly established victim services coordinator position. Historically, the Board’s chair/executive director has handled questions or concerns from victims or victims’ family members, but this approach can present the appearance of bias because he/she is potentially receiving information regarding a case before the Board and may neglect to share the information with the other board members. To address this issue, the Board applied for and received a grant from the Arizona Attorney General’s Office of Victim Services to fund a victim services coordinator position for fiscal year 2015. According to the Board, the grant will permit the Board to meet its statutory victim hearing notification requirements and improve its overall communication with victims. The Board should develop policies and procedures to guide the coordinator’s interaction with victims and appropriate provision of victim information to board members.

Recommendations:

- 1.1 The Board should develop its own conflict-of-interest form that covers the policies and procedures it established in 2014 regarding conflicts of interest.

¹ Organisation For Economic Co-operation and Development. (2005). *Managing conflict of interest in the public sector: A toolkit*. Paris, France: Author.

² The ACA is currently revising its standards, but an ACA official reported that it does not anticipate any changes in those standards related to board member training.

³ In its toolkit, Organisation For Economic Co-operation and Development guidelines also call for guidance and training to promote an understanding of established conflict-of-interest rules and practices and their application to the organization’s working environment. For example, public officials should be trained on the processes for identifying, managing, and resolving conflict of interest situations.

- 1.2 The Board should develop a formal process for ensuring board members periodically, such as annually, review and sign its conflict-of-interest form.
- 1.3 The Board should develop and implement formal training on the Board's policies and procedures for identifying, managing, and resolving conflicts of interest.
- 1.4 The Board should periodically review and update its conflict-of-interest policies and procedures and provide training on any changes made.
- 1.5 The Board should develop policies and procedures to guide the victim services coordinator's interaction with victims and appropriate provision of victim information to board members.

FINDING 2

The Arizona Board of Executive Clemency (Board) should continue its efforts to adopt a structured decision-making (SDM) process to promote accuracy, objectivity, consistency, and transparency when making parole and parole/community supervision revocation decisions. The Board's decision-making process is not formalized, and lacks established, empirically based procedures—such as risk assessments—that are recommended by national organizations and used by many other states. Adoption of an SDM process that is appropriate for Arizona would help ensure that the Board meets its mission to ensure public safety in a consistent and defensible manner. The Board has taken some preliminary steps toward such a process, such as establishing decision-making guidelines for parole hearings, but needs to ensure that any process is in line with best practices and accompanied by sufficient training for board members. In doing so, the Board may be able to obtain assistance, at little or no cost, from the National Institute of Corrections, a nationally recognized coordinating organization that assists paroling authorities in establishing appropriate decision-making tools.

Board should further enhance its decision-making process

Board's process for making parole and revocation decisions not formalized

The Board's decision-making process for granting or revoking parole has not been formalized. Best practices identify the use of SDM models as a means of ensuring that decisions are accurate, consistent, and transparent. The Board used such an approach prior to 2004, but reportedly discontinued it for budget reasons. At the beginning of the audit, the Board did not have a formalized process to guide board members in making parole and revocation decisions.

Best practices call for use of SDM models—Best practices developed by various national organizations highlight the use of SDM models as a critical mechanism to ensure accurate, objective, consistent, and transparent decisions. SDM models provide a framework for making decisions that more accurately predict positive or negative outcomes than decisions made using an unstructured process. For example, best practices recommend using SDM models that make use of an evidence-based risk-assessment tool to help determine whether an offender is likely to recidivate, as well as consideration of standardized factors found through research to predict recidivism, such as an offender's potential responsiveness to treatment and his/her release plans.

According to an international expert on SDM, use of an SDM model improves the accuracy of decision making by an average of 6 percent.¹ Without a structured process to help guide its decisions, a paroling authority's decisions may not be as accurate as possible, and thus may not be protecting public safety in the most effective manner. SDM models are not a substitute for making a decision, but rather a means for standardizing the decision-making process and providing an evidence-based rationale for each decision. SDM is espoused by several best practice organizations for paroling authorities, including the American Correctional Association (ACA), the Association of Paroling Authorities International (APAI), the National Institute of Corrections (NIC), and the National Parole Resource Center.

¹ Dr. Ralph Serin, Carleton University, conducted a series of research studies evaluating the gains in accuracy resulting from the use of an SDM model. Researchers reviewed old cases, evaluating case file information using the framework and comparing the results to actual board decisions and inmate outcomes. Accuracy in this context was defined as a reduction in the number of inmates who were granted release but recidivated while on parole, as well as a reduction in the number of inmates who were denied release but would have succeeded if released. This research is being prepared for publication.

Such models are in widespread use, either in whole or in part. According to an interview with an APAI official, many other states' paroling authorities make use of formal SDM models to help guide parole decisions, and most states are making use of some kind of risk-assessment tool in their decision-making process, which is an essential component of an SDM process. In addition, although not required by Arizona statute, some other states, including Florida and Texas, have statutory requirements for consideration of specific factors and/or the use of evidence-based practices in the decision-making process. For example, as the result of a legislative mandate, Florida has conducted research into evidence-based, objective decision making, and has established parole guidelines that require consideration of specific risk factors, such as how many times the offender has been convicted and the offender's age at the time of his/her first offense, to help ensure objectivity.

Board discontinued SDM approach in 2003—The Board designed and implemented an Arizona-specific SDM model in the early 1990s in response to a prior recommendation from the Office of the Auditor General (see Report No. 90-2). However, the use of this model was discontinued in 2003, reportedly due to dwindling resources. Specifically, according to board staff, staffing reductions limited the Board's ability to compile the information required to use the approach. According to information the Board provided for the *The Master List of State Government Programs Fiscal Years 2011-2013* report, the Board could not resume using an SDM model because of insufficient staffing.¹

Board lacked formalized decision-making process—At the beginning of the audit, the Board did not have a formalized process that provided guidance to board members on what factors they should consider when making parole and revocation decisions. As a result, to gain a deeper understanding of the process by which each board member made parole and parole/community supervision revocation decisions, including the specific factors they considered, auditors interviewed four board members between January 13, 2014 and March 5, 2014.² The interviews confirmed that although board members identified public protection as the Board's primary purpose and function, board members did not use evidence-based risk-assessment tools and/or standardized factors to help guide their decisions. Although there was some general agreement among board members as to what factors they considered when making release decisions, the interviews clearly illustrated important differences in which factors board members said they considered. For example, all four board members reported that they considered the nature and circumstances of the crime or parole/community supervision violation(s) and the inmate's plan for reintegration into society in both parole and revocation hearings, but only one of the four board members reported considering an inmate's mental health status. Additionally, only two of the four board members reported considering an inmate's overall criminal history when determining whether to reinstate parole or community supervision.

¹ This is the most current information for the Board because it did not provide information, a strategic plan, or performance data for *The Master List of State Government Programs Fiscal Years 2012-2015* report.

² During the time auditors conducted interviews with board members, only four of the five board member positions were filled.

Improving the decision-making process requires a more systematic approach and better training

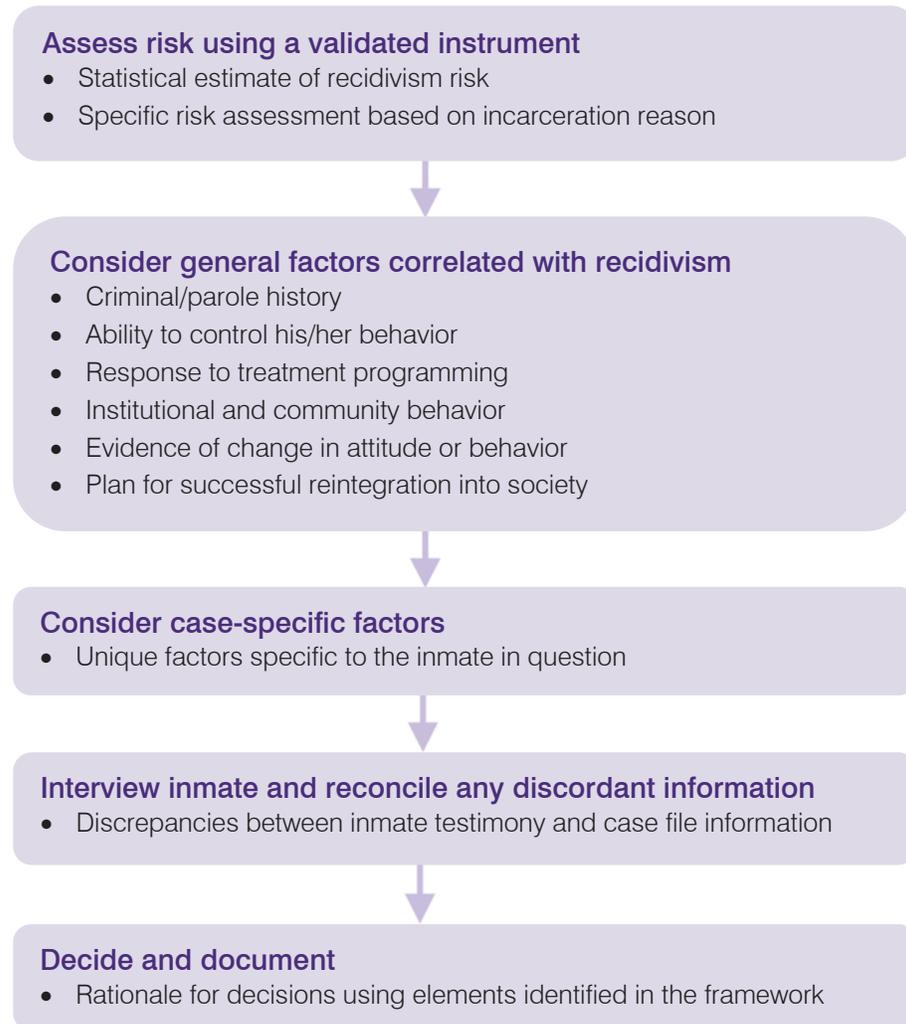
The Board has taken some preliminary steps toward reestablishing a structured approach to decision making, including establishing factors that should be considered in parole hearings. However, more remains to be done. As it moves forward in reestablishing a structured approach to decision making, the Board needs to ensure that a revised approach complies with best practices, including a process for documenting how it arrived at these decisions. After developing an SDM model that is appropriate for use in Arizona, the Board should document its process in formal policies and procedures and ensure that board members are trained on how to apply the model. To help offset the resource cost of developing its model, the Board should consider seeking technical assistance from the NIC, which can supply expertise at little or no cost to the State.

Board should continue its efforts to develop a structured decision-making model that aligns with best practices—The Board has taken some preliminary steps to reestablish its decision making around an SDM approach. During the audit, the Board developed decision-making guidelines for its parole hearings based on its review of decision-making processes used in other states such as California and Massachusetts. The guidelines outline the factors that should be considered in parole hearings, including the nature and circumstances of the crime; and the inmates' criminal history, incarceration history, and conduct during the hearing. According to the Board, it incorporated these guidelines into its new board member training program in January 2014, and has used the guidelines in training two new board members who were appointed in February 2014 and May 2014.

In addition to establishing this guidance, the Board should ensure that its SDM model is effective and appropriate for use in Arizona by incorporating the following best practice standards (summarized in Figure 1, see page 12):

- **Assess risk using a validated instrument**—Best practices indicate that an SDM process should begin with a risk-assessment using a validated instrument. This initial risk assessment provides board members with a baseline indicator of an inmate's risk of recidivism, which can be subsequently modified at the members' discretion through consideration of other factors. Research has shown that the risk-assessment tool used should be specific to the type of offense for which the inmate was incarcerated. For example, a risk-assessment instrument used for an inmate being considered for parole on a sex offense charge should be specific to sex offenders. The Arizona Department of Corrections is in the process of validating a risk-assessment tool for Arizona offenders who have been released on community supervision and anticipates that the validation will be completed by March 2015. In evaluating various risk-assessment instruments for use in its SDM model, the Board should review this risk assessment tool to determine whether any elements might be beneficial in developing its own risk-assessment instrument.
- **Consider general factors correlated with recidivism**—Although a risk-assessment tool provides an overall, statistically based starting point from which to approach a decision, the Board's SDM process should also include a detailed consideration of particular factors that have been shown through empirical research to be related to recidivism. Based on research endorsed by best practice organizations, the specific factors that should be included in SDM

Figure 1: The structured decision-making framework for paroling authorities



Source: Auditor General staff analysis of the structured decision-making framework developed by Dr. Ralph Serin of Carleton University and the NIC.

models for paroling authorities are the inmate’s criminal and parole history, ability to control behavior, response to treatment programming, institutional and community behavior, evidence of change in current attitude or behavior, and plan for successful reintegration into the community. Board staff compile documentation containing information related to the general factors identified as integral to an SDM model, and are required to provide this information to board members prior to hearings; however, board members are not required to consider these factors in a systematic way. An SDM model would direct board members to consider these categories specifically when making their decision; however, the weight of the factor and whether the factor constitutes an aggravating or mitigating circumstance would be left to the board members’ discretion.

- **Consider case-specific factors**—Best practices indicate that board members should consider any unique factors specific to the inmate in question to inform the release decision. Case-specific factors will vary and may include information regarding victim testimony, or an inmate’s attempts to gain access to a restricted population (e.g., an inmate convicted of child molestation and prohibited from being in the presence of children with a release plan that includes residing in a household with children).
- **Interview inmate and reconcile any discordant information**—Board members should consider their impressions of the inmate gained during the inmate’s interview at the hearing when making their decision. If the interview reveals any discrepancies between the inmate’s testimony and the information in the inmate’s case file, board members should work to reconcile these discrepancies prior to making a decision. According to an international expert, interview impressions should be incorporated judiciously into the decision-making process because basing decisions solely on inmate interviews can result in a decrease in decision-making accuracy.
- **Decide and document**—Board members should make a release decision that incorporates the information developed from the initial risk assessment, consideration of general and case-specific factors, and inmate interview impressions. In addition, the Board should clearly document the rationale behind its decision (i.e., the specific reasons for coming to a particular decision, particularly when the decision is at odds with risk-assessment information), using the model as a framework to describe the process by which the decision was reached. Although the Board documents its decisions in hard copy voting records, the basis or reasoning for board decisions are not well documented. As a result, the public and stakeholders may have difficulty in understanding how the Board reached its decision, and the Board may be unable to explain its decision in the event of an investigation. To allow for greater transparency, the Board needs to update its documentation to match the factors considered in the SDM process it implements.

Board should establish policies and procedures, and enhance training—During the audit, the Board established decision-making guidelines for parole hearings, but has not developed any new guidelines for revocation hearings, nor has it developed policies and procedures specifically for SDM. To effectively implement SDM, the Board should develop and implement formal policies and procedures to document and support its process. Policies and procedures will help ensure consistency and transparency by documenting the elements of its formal SDM process. In addition, best practice organizations such as the APAI and NIC indicate that without the development of clear policies, guidelines, and decision-making tools that can withstand scrutiny, board members’ overall ability and competence in decision making in general may be judged based on a single decision.

Training is also a critical component of an SDM process. However, the Board’s training program has primarily consisted of on-the-job training, such as observing hearings, to introduce new board members to and familiarize them with the Board’s decision-making process. The Attorney General’s Office also provides training on the statutory criteria that should be considered for each type of parole decision, but this training also does not address the decision-making process

directly.¹ All four of the board members interviewed identified deficiencies in the Board's training program, and indicated that additional training is needed to better understand how to make parole and parole/community supervision revocation decisions. Specifically, the board members discussed the need for training to include mock hearings, in which trainees can learn how to deal with various situations before encountering them during actual hearings. Board members also indicated a need for more training on the Department of Corrections' procedures as they relate to the Board, such as training on the details of how inmates are supervised by the Department of Corrections when on community supervision, and training on how to interpret inmate risk-assessment scores provided by the Department of Corrections.

Best practices support initial and ongoing training for board members. For example, the NIC advocates for formal training on new policies and procedures, including role modeling and interactive exercises such as reviewing a case with the new or modified guidelines to assist people in understanding how to use the policy and to ensure fidelity to the decision-making model.² The APAI advocates for a training program that includes initial and ongoing training related to current best practices and individual decision making. The ACA's recently revised accreditation standards for paroling authorities require that training curriculum be developed, evaluated, and updated based on an annual needs assessment that identifies current job-related training needs. The ACA also recommends that board members receive a minimum of 40 hours of relevant training annually.³ Therefore, the Board should ensure that board members receive sufficient initial and ongoing training on the SDM model it adopts. This training should be consistent with best practice standards.

Board should seek assistance in developing model, procedures, and training—In working to develop and implement an SDM model that is appropriate for use in Arizona and the associated policies, procedures, and training, the Board should consider pursuing opportunities for assistance offered by the NIC. In deciding what to include in the development and implementation of its SDM model, the Board could minimize the resources required by leveraging tools being developed by the Department of Corrections and structuring its process around the information it already has. For example, the Board may be able to make use of elements of the risk-assessment instrument being developed by the Department of Corrections' (see page 11), and it could ensure the process by which board staff compile information for the Board is based on the new SDM protocol. In addition, the Board can help to offset the additional resource costs by seeking assistance through the NIC. The NIC offers technical assistance free of charge to paroling authorities who are working to develop and implement SDM models. Specifically, upon request and at no cost to the requesting entity, the NIC will evaluate a paroling authority's existing decision-making process and provide recommendations to help align the process with best practice standards. In addition, the free technical assistance offered by the NIC includes a 1-week, on-site training component to provide

¹ A.R.S. §31-401(C) requires that each board member complete a 4-week training course related to the Board's duties and activities upon appointment, to be conducted by the Board in conjunction with the Attorney General's Office. Although the statute includes a requirement that the training include participation in a decision-making workshop, it does not specify what the workshop should include.

² Campbell, N. (2008). *Comprehensive framework for paroling authorities in an era of evidence-based practices*. Washington, DC: National Institute of Corrections.

³ The ACA is currently field testing revisions to its standards and auditors were able to obtain a draft copy of the new standards, which are expected to be approved by the end of 2014. However, the standards related to board member training have not had and are not expected to have any changes made to them from the previous set of standards.

training to board members and staff on the use of SDM and the associated risk-assessment instrument(s).

Further, the NIC offers initial and ongoing professional training for paroling authority board members on an annual basis, including orientation programs for new parole board members and board chairs. During this training, the NIC provides attendees with comprehensive training on core competencies for board members, including the use of evidence-based practices in decision making. Only one of the four current board members has attended formal board member training sponsored by the NIC; the other three board members have not received any training outside of the Board's initial training program. According to the Board, additional training opportunities have not been sought due to resource limitations; however, the NIC provides opportunities for board members to attend its training free of charge.¹

Recommendations:

- 2.1. The Board should continue working to develop and implement an SDM model that is appropriate for use in Arizona to guide its decisions and help to ensure transparency, consistency, and accuracy in its decision making. To ensure that it implements an effective and appropriate model that conforms to best practice standards, the Board should ensure that its model incorporates the following components:
 - a. Risk assessments using evidence-based, validated risk-assessment tools appropriate to the type of offender being considered for release;
 - b. Consideration of general factors found to be correlated with recidivism, including:
 - Inmate's criminal and parole history;
 - Inmate's ability to control his/her behavior;
 - Inmate's response to treatment programming;
 - Inmate's institutional and community behavior;
 - Evidence of change in inmate's attitude or behavior; and
 - Inmate's plan for successful reintegration into society.
 - c. Consideration of case-specific factors;
 - d. Inmate interview and reconciliation of discordant information between the interviews and case files; and

¹ Board members must go through an application process and be approved in order to receive funding to attend the NIC training, which includes training on core competencies for board members and evidence-based decision making. If approved, all costs are covered by the NIC, including airfare, lodging, and most meals; board members are responsible only for securing transportation to and from the airport and paying for breakfast.

- e. Appropriate documentation of board decisions.
-
- 2.2 The Board should develop and implement policies and procedures that document and support the Arizona-specific SDM model it adopts.
 - 2.3 The Board should ensure that board members receive sufficient initial and ongoing training on the use of its Arizona-specific SDM model that is consistent with best practice standards.
 - 2.4 To help offset the resource cost associated with the development of its Arizona-specific SDM model, the Board should consider pursuing opportunities for assistance in developing its model offered by the National Institute of Corrections, and how it can best make use of the information already available to it.

FINDING 3

The Arizona Board of Executive Clemency (Board) should continue its efforts to better meet hearing timeliness goals and notification requirements. From January through May 2014, the Board did not schedule about one-third of its parole/community supervision revocation hearings within the 60-day reasonable time frame goal established in case law, and an investigation determined that the Board's former chair/executive director did not provide some victims at least 15 days' notice of hearings or decisions as required by law. The Board lacked key mechanisms for ensuring it meets these time frames, such as procedures and training. The Board has begun addressing these concerns and should expand its efforts to include a supervisory oversight process and staff training. The Board should also continue collaborating with the Arizona Department of Corrections to address some of these areas because the Board relies on Department of Corrections' notifications to schedule hearings and uses a part of the Department of Corrections' inmate management system to record information about its hearings. Finally, the Board should work with its Assistant Attorney General and the Department of Corrections to develop a revocation hearing waiver form for inmates who will be released prior to the next available revocation hearing date.

Board should continue taking steps to better meet hearing time frame goals and notification requirements

Board did not meet all hearing goals and requirements

The Board did not meet all goals and requirements related to scheduling revocation hearings and notifying victims of its hearings and decisions. The lack of timely hearings and missed and/or untimely notifications may result in due process violations, additional costs to the State, and violations of victims' rights.

Timeliness issues found—The Board did not meet hearing and notification goals and requirements for some cases. Specifically:

- **More than one-third of revocation hearings untimely during time period reviewed**—Thirty-five percent of the Board's revocation hearings were not scheduled within the 60-day reasonable time frame goal set forth in case law, and the Board is at risk for further untimely hearings (see textbox on page 18 for case law guidelines). After a parolee or individual on community supervision has been arrested and returned to the Department of Corrections' custody, the Department of Corrections informs the Board of the need to conduct a revocation hearing. A revocation hearing determines whether the parolee can remain on parole or community supervision or should be returned to prison for the remainder of his/her sentence. Case law indicates that it is reasonable to hold these hearings within 60 days of a parolee's arrest. However, auditors' analysis of the Board's data for revocation hearings scheduled from January through May 2014 found that the Board conducted 391 of the 1,118 revocation hearings, or 35 percent, more than 60 days after the parolee was arrested and returned to the Department of Corrections' custody. On average, these hearings were conducted 19 days after the 60-day time frame goal.

There are two key reasons why some of the revocation hearings are untimely. First, based on auditors' analysis, it takes the Department of Corrections an average of 22 days to notify the Board of the need to hold a revocation hearing. Therefore, the Board has only 38 days to work with to schedule a hearing to comply with the 60-day time frame. Second, to allow time to prepare for and provide appropriate notice of hearings, the Board sets its schedule a month in advance. For example, in July, the Board is working to establish the August hearing schedule.

Revocation hearing case law timeliness guidelines

- **Morrissey vs. Brewer (1972)**—This federal court case sets the precedent that it is reasonable to hold a revocation hearing within 60 days after a parolee has been arrested.
- **Application of Nicholson (1977)**—This Arizona court case sets the precedent that holding a probable cause hearing 71 days after a parolee has been arrested for an alleged parole violation is too long, and violates due process. A probable cause hearing only determines if the parolee has violated the conditions of parole. In Arizona, the probable cause hearing is held at the same time as the revocation hearing.

Source: Auditor General staff summary of *Morrissey vs. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), *Application of Nicholson*, 114 Ariz. 397, 561 P.2d 318 (1977), and Attorney General Office staff interview information.

- **Notifications to some victims untimely**—Article 2, §2.1(A)(9) of the Arizona Constitution provides that a victim has the right to be heard at any post-conviction proceeding where an offender is being considered for release from confinement. Further, Arizona Revised Statutes (A.R.S.) §§13-4414 and 31-411 require that if a victim has requested to be notified, the Board must provide the victim written notification, at least 15 days before a parole or clemency hearing, of his/her right to be present and heard. The Board must also provide the victim written notification of its parole and clemency decisions within 15 days. However, an August 2013 joint investigation conducted by the Arizona Department of Administration and the Governor's Office of Equal Opportunity found that the former board chair/executive director, who was in the position from April 2012 through August 2013, was "failing to provide victims with 15 days' notice when hearings were being held or canceled or inmates released."

During the audit, the Board was at continued risk for not meeting notification requirements because of data system issues. Board staff record information related to board hearings, such as hearing dates and decisions, in the Department of Corrections' inmate management system. According to board staff, once staff enter a hearing date in the system, the system generates the notice letters at night, but does not print them. Rather, according to board staff, the system requires staff to print the notices the next day and if not printed the next day, the system's print queue is emptied and does not save the letters. Therefore, there is a risk that the letters might not be printed and sent if a staff member was not there or forgot to perform these tasks the next day. In addition, the system does not record a date when the letters are printed, so there is no record of printing. These data system issues were heightened because, at the beginning of the audit, the Board lacked adequate policies and procedures and training materials that would help all board staff understand the Board's responsibilities related to hearing and decision notifications.

Untimely hearings and victim notifications have several impacts—Untimely hearings and missed and/or untimely notifications may result in due process violations, additional costs to the State, and violations of victims' rights. Specifically:

- **Due process violations**—Because of the 60-day reasonable time frame goal established in case law, the State is at risk for being sued by a parolee when it does not hold its revocation hearings within this time frame.
- **Increased costs**—Delays can increase state costs if the offender must be held longer in prison. According to the Department of Corrections, the daily rate for housing an inmate in prison is \$65.04, compared to the community supervision cost of \$7.81 per offender, per day.

- **Victims' rights violations**—If victims are not properly notified of the Board's hearings or decisions, the Board may fail to meet its mission to protect public safety and violate victims' constitutional and statutory rights to be notified and heard. Specifically, Article 2, §2.1(A)(9) of the Arizona Constitution provides that a victim has the right to be heard at any post-conviction proceeding where an offender is being considered for release from confinement. In addition, according to A.R.S. §13-4436(A), failure to comply with the victim's rights provides grounds for the victim to seek to set aside the release until the victim is afforded an opportunity to be present or heard. Similarly, A.R.S. §13-4437(B) states that the victim has the right to recover damages from a governmental entity for intentional or grossly negligent violations of the victim's rights.

Board should continue and enhance efforts to address untimeliness

The Board should continue its efforts to develop and implement policies and procedures and other practices that will help ensure it meets hearing time frame goals and notification requirements. Similar to the concerns raised in Findings 1 and 2 (see pages 5 through 16), at the beginning of the audit, the Board lacked key policies and procedures to help ensure that it met hearing time frame and notification requirements. However, during the audit, the Board began addressing these concerns. Specifically:

- **Board is establishing key policies and procedures**—At the beginning of the audit, the Board lacked adequate policies and procedures for complying with the various hearing and notification requirements. These included policies and procedures for prioritizing and scheduling hearings, sending and documenting hearing notices, and tracking activities, such as whether an inmate's parole/community supervision revocation hearing had been scheduled within the 60-day reasonable time frame goal. Auditors' interviews with staff found that each staff person scheduled and tracked hearings in a different manner. However, during the audit, the Board began developing procedures. For example, in April 2014, for revocation hearings, the Board established step-by-step procedures for scheduling these hearings, creating board member packets, meeting notification requirements, and documenting pertinent information in the Department of Corrections' system or the Board's files.

Further, according to board staff, in June 2014, after auditors had completed their work, the Board developed and implemented similar procedures for its two other types of hearings—parole and clemency. According to the Board, it continues to clarify the procedures to ensure that they are easy to understand and follow. The Board should continue its efforts to develop and implement policies and procedures, and in doing so, should ensure that the policies and procedures refer to any statutory requirements and provide step-by-step guidance on how to properly schedule hearings, meet notification requirements, including the time frames for doing so, and document pertinent information in the Department of Corrections' data system or the Board's files. For example, the Board's policies and procedures should indicate that A.R.S. §31-411(H) requires the Board to file a hard copy of the notice sent to the victim as evidence that notification was sent.

- **Board hired administrator who will provide oversight**—In November 2013, the Board hired an administrator who is working with staff to develop procedures and who also provides staff oversight. According to internal control standards, ongoing monitoring provides reasonable assurance that an organization is operating effectively and efficiently and adhering to established policies and procedures.¹ Therefore, the Board should ensure this position continues to provide oversight by developing and implementing a supervisory review process for key requirements, such as the timely scheduling of revocation hearings and ensuring victims are notified of hearings and decisions in a timely manner. This process should be outlined in the Board's policies and procedures.
- **Board should develop staff training**—At the beginning of the audit, only one staff member was familiar with the informal processes for scheduling hearings and issuing notification letters for revocations, paroles, and clemency actions. When this staff member was on leave in November 2013, the Board was unable to effectively perform this work. Therefore, the Board should develop and implement training for staff on its policies and procedures and continue with its plan to cross-train staff. The Board should also develop a process for regularly updating its staff training as processes change and for providing refresher training.

Addressing timeliness also requires further collaboration with the Department of Corrections

To fully address these issues, the Board needs to continue its efforts to collaborate with the Department of Corrections, because it relies on the Department of Corrections for critical information, such as listings of parolees who need to be scheduled for parole/community supervision revocation hearings, to initiate some of its processes. The Board has begun working with the Department of Corrections to address data system concerns related to victim notifications. For example, in May 2014, the Board worked with the Department of Corrections to add a date field where board staff can enter the date that hearing notification and decision letters are printed and sent. According to the Board, it is also working with the Department of Corrections to improve the information contained in these notification letters. The Board should continue these efforts and collaborate with the Department of Corrections on two other areas: Specifically:

- **Board should continue to work with Department of Corrections to further improve timeliness of revocation hearings**—The Board and the Department of Corrections have agreed to a process by which the Department of Corrections sends notifications of required revocation hearings to the Board once every 2 weeks. However, the Board should continue to collaborate with the Department of Corrections to identify ways to further improve the timeliness of parole/community supervision revocation hearings.
- **Board should work with Department of Corrections to develop appropriate management reports**—To help ensure that it meets revocation hearing time frame goals and notification requirements, the Board needs reports that show actual performance. However, the Board

¹ Grant Thornton LLP. (2009). *Guidance on monitoring internal control systems*. Durham, NC: Committee of Sponsoring Organizations of the Treadway Commission.

currently does not have appropriate management reports. For example, there are no management reports showing how the Board is doing at meeting the 60-day reasonable time frame goal established in case law for revocation hearings. The National Institute of Corrections suggests that agencies should develop the capacity to capture, manage, and evaluate data to ensure agency goals are being reached.¹ Therefore, the Board should work with the Department of Corrections to establish appropriate management reports that will help it assess whether it is meeting hearing and notification requirements, such as time frame requirements. As it works to obtain management reports from the Department of Corrections' inmate management system, the Board also needs to ensure it can obtain such reports under a new inmate management system the Department of Corrections is developing. The Department of Corrections estimates its new system should be implemented by the second half of fiscal year 2017. Therefore, the Board should work with the Department of Corrections to ensure that the new system can produce the management reports the Board needs.

One additional action can help reduce unnecessary work in the revocation hearing process

The Board should take an additional step to improve the parole/community supervision revocation hearing process. This step involves correcting a problem that arose when, in March 2014, the Board took steps to ensure all individuals needing a parole/community supervision revocation hearing were scheduled for a hearing. According to board staff, prior to that time, individuals whose parole or community supervision end date was within 21 days of the soonest available revocation hearing date were not scheduled for a hearing because there was not enough time to process and release an inmate within 21 days if the Board voted to reinstate parole/community supervision. Citing potential due process violations, in March 2014, the Board began scheduling parole/community supervision revocation hearings even if an individual's parole or community supervision end date occurred before the hearing. This change set up situations in which board staff were preparing—and board members were reviewing—hearing packets for individuals who would already be released by the date of the hearing.

These anomalies occur often enough that attention to the matter is warranted. According to board data, in March and April 2014, a total of 84 revocation hearings were scheduled where the individual's parole or community supervision ended before the scheduled hearing date. Thus, the hearings were canceled. In addition, if these hearings are not needed, the Board could use that time to schedule other hearings. Therefore, the Board should work with its Assistant Attorney General and the Department of Corrections to develop a form that would allow the individual to waive his/her right to a revocation hearing if the parole or community supervision end date will occur before the next soonest available revocation hearing date. The Department of Corrections already has a waiver form where inmates can waive their right to a parole hearing that could be used as a model for developing the parole revocation hearing waiver form.

¹ Campbell, N. (2008). *Comprehensive framework for paroling authorities in an era of evidence-based practices*. Washington, DC: National Institute of Corrections.

Recommendations:

- 3.1 The Board should continue to develop its policies and procedures. It should ensure that its policies and procedures refer to any statutory requirements and provide step-by-step guidance on how to properly schedule hearings, meet notification requirements including time frames, and document pertinent information in the Department of Corrections' data system or the Board's files.
- 3.2 The Board should develop and implement a supervisory review process for key requirements, such as scheduling revocation hearings and ensuring victims are notified of parole hearings and decisions in a timely manner. This process should be outlined in the Board's policies and procedures.
- 3.3 The Board should develop and implement staff training, including:
 - a. Training on its new policies and procedures;
 - b. Continuing with its efforts to cross-train staff; and
 - c. A process for regularly updating its staff training and for providing refresher training.
- 3.4 The Board should continue to collaborate with the Department of Corrections on addressing data system issues related to victim notification letters.
- 3.5 The Board should continue to collaborate with the Department of Corrections to identify ways to further improve the timeliness of a parole/community supervision revocation hearings.
- 3.6 The Board should work with the Department of Corrections to establish appropriate management reports from the Department of Corrections' inmate management system that will help it assess whether it is meeting hearing and notification requirements, such as time frame requirements.
- 3.7 The Board should work with the Department of Corrections as it is developing its new inmate management system to ensure that the new system can produce the management reports the Board needs.
- 3.8 The Board should work with its Assistant Attorney General and the Department of Corrections to develop a form that would allow an individual to waive his/her right to a parole/community supervision revocation hearing if his/her parole or community supervision end date will occur before the next soonest available revocation hearing date.

FINDING 4

To further assist in addressing the concerns identified in this audit, the Arizona Board of Executive Clemency (Board) should modify its organizational structure to allow for an enhanced focus on administrative leadership and oversight of board activities and responsibilities. Specifically, the combined board chair and executive director positions have potentially reduced the time and attention the person in these positions can devote to overseeing and administering the Board's operations because of the board chair position's work demands. Further, when these positions are combined, the 2-year term limit of the board chair position can lead to potential instability and negatively affect the Board's operations. The Board received an increase in its fiscal year 2015 State General Fund appropriation to separate its board chair and executive director positions by providing funding for the fifth board member and it should develop and implement a transition plan for doing so.

Board should separate the combined board chair and executive director positions to enhance administrative leadership and oversight

Combined board chair and executive director positions may have resulted in lack of key operational and oversight procedures

Beginning in 2004, statute either required or allowed the board chair to also serve as the Board's executive director.¹ According to the Board, the positions were combined to help control costs. However, combining these two positions may have contributed, in part, to the issues and concerns identified in Findings 1 through 3 (see pages 5 through 22). Although the current board chair/executive director and staff have taken steps to establish some operational and oversight policies and procedures, the National Institute of Corrections (NIC) has determined that the board chair and executive director positions for a paroling authority have different responsibilities and therefore conducts separate trainings for each position. Further, a combined board chair/executive director position is uncommon among other Arizona boards. In addition, this structure impacts the board chair/executive director's ability to effectively oversee the Board's operations for two key reasons. Specifically:

- **Board chair hearing responsibilities leave little time to oversee and administer board operations**—The board chair is responsible for preparing for and attending the Board's parole, revocation, and clemency hearings, which leaves little time for the person to fulfill his/her executive director responsibilities, including overseeing board operations. Specifically, the Board conducts hearings 4 days a week, allowing up to 10 hours a day for holding its hearings. This provides minimal time for the board chair, in his/her dual role as the executive director, to also oversee and administer board operations.
- **Term limits can lead to potential instability in board operations**—Although the Governor can choose to reappoint a board chair, statute requires that the Governor appoint a chair every 2 years, which can lead to frequent turnover of the Board's executive director position, potentially negatively affecting board operations and oversight. According to a

¹ Initially, Laws 2004, Ch. 281, §12, required that the board chair act as the executive director during fiscal years 2004 through 2007. Next, Laws 2007, Ch. 261, §10, required that the board chair act as the executive director during fiscal years 2007 through 2009. Finally, Laws 2010, Ch. 6, §12, amended statute to state that the chair may act as the executive director.

representative of the NIC, the 2-year term reduces an executive director's ability to gain institutional knowledge of a paroling authority's operations. Additionally, a lack of institutional knowledge can affect the executive director's ability to provide appropriate day-to-day assistance to or oversight of board staff. In addition, the 2-year term may not allow enough time for the board chair/executive director to develop and fully implement a 5-year strategic plan. For example, the Board did not provide a strategic plan in the *The Master List of State Government Programs Fiscal Year 2012-2015* report.

Board should move forward with separating its board chair and executive director positions, including establishing clear responsibilities for each position

To enhance its ability to provide administrative leadership and oversight, the Board should separate its board chair and executive director positions. The Board's approved fiscal year 2015 State General Fund appropriation includes additional funding to separate the two positions. Specifically, according to the Joint Legislative Budget Committee's *Fiscal Year 2015 Appropriations Report*, the Board's fiscal year 2015 State General Fund appropriation included an additional \$120,000 to separate its board chair and executive director positions by providing funding for the fifth board member, and to fill support staff positions within its current full-time equivalent staffing authority. In addition, on June 25, 2014, the Board voted to separate its board chair and executive director positions. Arizona Revised Statutes §31-401 provides the Board authority to employ an executive director. However, to ensure this separation is effective, the Board should develop and implement a plan for separating the positions that will allow for a smooth transition. The board-approved transition plan should include various steps, such as developing position descriptions, responsibilities, and qualifications for the board chair and executive director positions to ensure the duties are distinct and appropriate for each position, creating a formalized process for selecting the executive director, and establishing time frames for completing the various plan activities. In June 2014, the board chair/executive director sent the Governor's Office a request to update the position description for the board chair position. According to the board chair/executive director, the duties of the board chair and executive director have been prepared and are awaiting approval by the Arizona Department of Administration.

Recommendation:

- 4.1 The Board should develop and implement a plan for separating the board chair/executive director positions. The board-approved transition plan should include various steps such as developing position descriptions, responsibilities, and qualifications for the board chair and executive director positions to ensure the duties are distinct and appropriate for each position, creating a formalized process for selecting the executive director, and establishing time frames for completing the various plan activities.

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following factors in determining whether the Arizona Board of Executive Clemency (Board) should be continued or terminated. This analysis includes a recommendation for the Board to correct two areas of noncompliance with the State's open meeting law (see Sunset Factor 5, pages 28 through 29).

1. The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.

The Board has decision-making responsibilities in three key areas: parole, parole/community supervision revocation, and clemency. The Board makes parole decisions for individuals who committed offenses before January 1, 1994. It also holds revocation hearings to determine whether individuals who have been arrested after being placed on parole or community supervision should remain in the community. Finally, the Board develops clemency recommendations for the Governor's review and final decision (see Introduction, pages 1 through 4, for more information on the Board's parole and clemency responsibilities). In calendar year 2013, the Board made 317 parole decisions, 1,840 revocation decisions, and approximately 400 clemency decisions.

The Board's objective and purpose are not handled by private enterprises in any other states; all states, including Arizona, have some type of state agency with paroling authority. According to a 2008 document published by the National Institute of Corrections, the structure of the paroling authority can range from an independent paroling authority agency that is responsible for making release decisions to paroling authorities who are part of a department of corrections or community corrections agency.¹

Similarly, clemency decisions in all 50 states, including Arizona, reside with an executive branch agency. Specifically, although each state's clemency authority structure is governed by unique statutory and constitutional provisions, three general types of structures exist in the United States (see textbox).

Clemency authority structures

Authority vested in the governor—In 24 states, clemency is granted or denied at the sole discretion of the governor.

Authority vested in an administrative board—In 6 states, clemency is granted or denied at the discretion of an independent board or commission.

Authority shared between the governor and an administrative board or commission—In 20 states, clemency is granted or denied based on a decision reached by some combination of the governor and an administrative board or commission.

Source: Clark, M. (2013). *Governors balance pardons with politics*. Retrieved December 24, 2013 from www.pewstates.org/projects/stateline/headlines/governors-balance-pardons-with-politics-85899449577#

¹ Campbell, N.M. (2008). *Comprehensive framework for paroling authorities in an era of evidence-based practices*. Washington, DC: National Institute of Corrections.

2. The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

The Board has generally met its statutory objective and purpose, but should make improvements in some areas. Some examples in which the Board has efficiently met its objective and purpose include:

- **Conducting parole hearings in a timely manner**—Auditors’ analysis of data for the 1,350 parole hearings conducted between January 2011 and February 4, 2014, determined that once the Board received notification from the Arizona Department of Corrections that an inmate was eligible for parole, the Board held approximately 92 percent of its parole hearings within 90 days from receiving this notification, and 99 percent of its parole hearings were held within 180 days of receiving the eligibility notification.
- **Establishing policies and procedures**—Since January 2014, the Board has developed and implemented several new procedures or updated previous ones. For example, from January through April 2014, the Board approved three new policies that address various aspects of conflicts of interest (see Finding 1, page 6). Similarly, in April 2014, the Board established step-by-step procedures for scheduling revocation hearings, creating board member packets, meeting notification requirements, and documenting pertinent information (see Finding 3, page 19).

However, the audit found that the Board can better meet its statutory objectives and purpose by:

- **Strengthening its efforts to help ensure that board members are free from conflicts of interest**—The Board has faced legal challenges and investigations questioning potential impairments to objective decision making as recently as calendar year 2013. As discussed in Finding 1 (see pages 5 through 8), although the Board has developed and implemented policies and procedures detailing the ethical standards expected of board members and staff, it should continue in its efforts to conform with recommended standards, including developing a conflict-of-interest form and implementing a formal training process for helping to ensure that board members are free from conflicts of interest.
- **Continuing its efforts to establish a structured process for decision making**—The Board’s process for making decisions is not formalized, and lacks structured, evidence-based procedures recommended as best practices. The Board has taken some preliminary steps toward developing such a process. However, to ensure that it most effectively meets its mission to ensure public safety in a consistent and defensible manner, the Board should continue in its efforts to develop and implement a structured decision-making model appropriate for use in Arizona that conforms to best practices, and should ensure that board members are sufficiently trained in its use (see Finding 2, pages 9 through 16, for more information).
- **Meeting hearing and notification requirements**—As discussed in Finding 3 (see pages 17 through 22), auditors’ review of parole/community supervision revocation

hearings from January through May 2014 determined that the Board was untimely in scheduling about one-third of these hearings within the 60-day reasonable time frame goal established by case law, and an August 2013 joint investigation conducted by the Arizona Department of Administration and the Governor's Office of Equal Opportunity determined that the Board's former chair/executive director did not provide some victims at least 15 days' notice of hearings or decisions as required by statute. The Board lacked key mechanisms, such as policies, procedures, and training, to help ensure it was meeting revocation hearing time frame goals and victim notification requirements. Although the Board has begun addressing these concerns, it should take additional steps to help ensure it meets revocation hearing time frame goals and notification requirements. Specifically, the Board should enhance staff training and implement a supervisory oversight process. In addition, the Board should work with the Department of Corrections to address some of these areas, because it relies on notifications from the Department of Corrections to schedule hearings and uses the Department of Corrections' inmate management system to record information about its hearings. Finally, the Board should work with its Assistant Attorney General and the Department of Corrections to develop a revocation hearing waiver form for inmates that will be released prior to the next available revocation hearing date.

- **Separating the combined board chair and executive director positions**—Beginning in 2004, statute either required or allowed the board chair to serve as the Board's executive director. However, combining these two positions has potentially affected the oversight and administration of the Board's operations. The Board received an increase in its fiscal year 2015 State General Fund appropriation to separate its executive director and board chair positions by providing funding for the fifth board member, and it should develop and implement a transition plan for doing so (see Finding 4, pages 23 through 24).

3. The extent to which the Board serves the entire State rather than specific interests.

The Board provides clemency and parole hearing services to inmates throughout Arizona. According to A.R.S. §31-402, all persons who have committed felonies in Arizona must appear before the Board for reprieves, commutations, paroles, and pardons. The Board makes parole decisions for individuals who committed offenses before January 1, 1994; however, Arizona's truth-in-sentencing laws abolished parole for offenses committed on or after January 1, 1994, and the Department of Corrections is responsible for releasing inmates who have met the truth-in-sentencing requirements directly to community supervision.¹ Inmates eligible for parole are in the custody of the Department of Corrections in facilities throughout the State and the Board's hearings are conducted through video conferencing or telephonically. The Board also conducts revocation hearings for individuals on parole or those under community supervision after these individuals have been arrested. In these cases the Board determines whether the individual has violated the terms of his/her supervision and decides whether it would be in the best interest of the public for the individual to remain on parole or community supervision or to return to prison for the remainder of his/her sentence.

¹ In 1993, Arizona adopted truth-in-sentencing laws that abolished discretionary release by a parole board for any offense committed on or after January 1, 1994, and require offenders to serve at least 85 percent of their sentence before becoming eligible for community supervision. The 85 percent requirement applies to both violent and nonviolent offenders. Prior to this change, prisoners were required to serve at least 67 to 75 percent of their sentences depending on the offense, but typically became eligible for parole after serving one-half or two-thirds of their sentences. Truth in sentencing was adopted to promote truth and accountability in sentencing by requiring offenders to serve nearly all of their sentence.

All board hearings are open to the public. Additionally, victims have a right to be heard at the hearings and can do so in person, by phone, or by providing a written statement. As discussed in Finding 3 (see pages 17 through 22), an investigation determined that the Board's former chair/executive director did not provide some victims with sufficient notice of hearings or decisions as required by law, and the Board should continue its efforts to address these concerns by developing and implementing staff training and a supervisory review process, and continuing to work with the Department of Corrections on addressing data system issues related to victim notification letters.

Further, the Board provides the public with information on its Web site regarding hearing information, victim's rights information, and application forms for public information requests and clemency applications. The Board's Web site also provides a link to the inmate search page on the Department of Corrections' Web site, where individuals can conduct searches for specific inmate information.

4. The extent to which rules adopted by the Board are consistent with the legislative mandate.

General Counsel for the Office of the Auditor General has analyzed the Board's rule-making statutes and believes that the Board's rules are consistent with statute.

5. The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

Auditors found that the Board has not proposed any rule changes since it received its last review from the Governor's Regulatory Review Council in 2011.

Auditors assessed the Board's compliance with various provisions of the State's open meeting law for its October 30, 2013, and December 24, 2013, board business meetings and its October 23, 2013, and December 24, 2013, board hearings. Auditors found some areas where the Board was out of compliance with open meeting law. For example, auditors found that the Board's agendas did not contain all the required elements as specified in A.R.S. §38-431.02. Specifically, the December 24, 2013, agenda did not indicate that it was a notice of a meeting, and did not specifically cite the provision of law authorizing executive session as required. Further, the Board's audio minutes for its October 23, 2013, meeting did not reflect one of the ten hearings held that day. In addition, the Board was not in compliance with A.R.S. §41-1091.01 because it had not posted the full text of its rules on its Web site, or the Web site address and location of the full text of its rules. During the audit, the Board revised its agendas, minutes, and Web site to address these deficiencies, and auditors' subsequent review determined it had come into compliance.

However, there are two areas of open meeting law where deficiencies remain. First, on more than one occasion during the audit, because of problems with its audio recording equipment, the Board was unable to provide its meeting minutes within 3 days as statutorily required. Second, although the Board includes substantive policy statements on its Web site, these statements do not provide the required notice about them being advisory only

as required by A.R.S. §41-1091. The Board should comply with these requirements by ensuring it has functioning audio equipment to record and produce minutes for the public within 3 working days and by adding the required advisory notice to its substantive policy statements.

6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

This factor does not apply because the Board is not a regulatory agency. However, effective April 2014, the Board adopted a complaint process policy for receiving and resolving concerns made by the public. This policy outlines how complaints are received, how investigations will be conducted, and how the complaints will be resolved.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

The Arizona Attorney General is the Board's attorney according to A.R.S. §41-192, and handles all the Board's legal services. In addition, the Attorney General's Office provides training to new board members on statutes related to parole and clemency decisions, and defends the Board in legal challenges.

8. The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

The Board identified one deficiency in its statutes that prevents it from fulfilling its statutory mandate. Specifically, Laws 2013, 1st S.S., Ch. 5, §4 revised A.R.S. §31-401 by changing board members' compensation from a full-time salary basis to an hourly wage, and according to the Board, this has hindered its ability to attract and retain board members.

In addition, although not requested by the Board, some additional changes have been made to the Board's enabling statutes since 2010 as follows:

- Laws 2010, Ch. 57, §1 modified A.R.S. §31-411(F) by increasing the amount of the community supervision fee that the Board requires as a condition of parole, changing where monthly supervision fees are deposited, and establishing the Community Corrections Enhancement Fund to pay for costs related to community corrections.
- Laws 2012, Ch. 321, §40 modified A.R.S. §31-401 by removing the requirement for the Governor to choose board members from a pool of candidates chosen by a selection committee.
- Laws 2012, Ch. 208, §1 modified A.R.S. §31-411 by adding that the Board may require as a condition of parole that the inmate pay the reasonable costs associated with the inmate's participation in a drug testing program. Additionally, the monies collected may only be used to offset the costs of the drug testing program.
- Laws 2013, 1st S.S., Ch. 5, §4 revised A.R.S. §31-401, in addition to the changes mentioned above, to establish that board members are not eligible for paid leave, and provide that

after December 31, 2013, board members were eligible for state employee health and accident benefits provided in A.R.S. §38-651.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the sunset law.

This performance audit did not identify any needed changes to the Board's statutes.

10. The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.

Terminating the Board would affect the public's safety and welfare if its functions were not transferred to another entity. The Board is charged with ensuring public safety by considering and granting parole to inmates who are certified parole eligible by the Department of Corrections and who appear not to pose a threat to society. The Board conducts parole hearings for inmates who were convicted of offenses committed on or before January 1, 1994. The Board is also responsible for conducting revocation hearings for individuals on parole and community supervision who have been arrested. In these cases, the Board determines whether the individual has violated the terms of supervision and decides whether it would be in the best interest of the public for an individual to remain on parole or community supervision or to return to prison for the remainder of his/her sentence. In addition, the Board makes recommendations to the Governor for clemency actions including pardons or commutations of sentence and reprieves, when it is in the best interest of Arizona's citizens.

11. The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

This factor does not apply because the Board is not a regulatory agency.

12. The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Board has Interagency Service Agreements (ISA) with other state government agencies for some administrative functions and has approved pursuing a private contract for an additional function. Specifically, the Board has an ISA with the Arizona Department of Administration for accounting services and an ISA with the Department of Corrections that defines the responsibilities of the Board and the Department of Corrections in the parole/community supervision revocation process to ensure adherence to due-process timeline requirements for parole/community supervision hearings. In addition, in June 2014, the Board approved pursuing a contract with a private security agency to provide security at its board hearings for fiscal year 2015. The Department of Corrections previously provided security for the Board, but the contract expired at the end of fiscal year 2014.

The National Institute of Corrections indicated that it was unaware of any state paroling authorities that used private contracts for functions other than administrative tasks, such as accounting and information technology. The audit did not identify any additional areas where the Board should consider using private contractors.

APPENDIX A

Methodology

This appendix provides information on the methods auditors used to meet the audit objectives.

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Arizona Board of Executive Clemency (Board), its chair/ executive director, and staff for their cooperation and assistance throughout the audit.

Auditors used various methods to study the issues addressed in this report. These methods included reviewing board statutes and policies and procedures; reviewing budget information; interviewing board members and staff; and reviewing information from the Board's Web site.

In addition, auditors used the following specific methods to meet the audit objectives:

- To determine the controls the Board has in place to ensure board members are free from personal or external impairments to objective decision making, auditors conducted interviews with all four board members appointed as of January 2014. In addition, auditors reviewed an August 2013 joint investigation conducted by the Arizona Department of Administration and the Governor's Office of Equal Opportunity, the Board's conflict-of-interest statements, the American Correctional Association's draft accreditation standards, and conflict-of-interest guidelines published by the Organisation for Economic Co-operation and Development.¹ Further, to assess the board's organizational structure, auditors reviewed state statutes for other Arizona boards, the Joint Legislative Budget Committee's *Fiscal Year 2015 Appropriations Report*, and *The Master List of State Government Programs Fiscal Years 2011-2013* and *Fiscal Years 2012-2015* reports.
- To determine the type of information, tools, or other factors the Board uses or considers when making parole-related decisions, auditors conducted structured interviews with all four board members appointed as of January 2014, and reviewed the Office of the Auditor General's 1990 performance audit of the Board regarding decision making (see Report No. 90-2). Further, auditors reviewed two publications, the National Institute of Corrections (NIC) *Comprehensive Framework for Paroling Authorities in an Era of Evidence-Based Practices* and *A Handbook for New Parole Board Members*, sponsored by the Association of Paroling Authorities International and the NIC, and consulted with a subject matter expert in best practices with decision making.^{2,3} Finally, auditors reviewed the Board's training process as it related to decision making.
- To determine the caseload management practices the Board uses, auditors conducted structured interviews with all four board members

¹ Organisation For Economic Co-operation and Development. (2005). *Managing conflict of interest in the public sector: A toolkit*. Paris, France: Author.

² Campbell, N. (2008). *Comprehensive framework for paroling authorities in an era of evidence-based practices*. Washington, DC: National Institute of Corrections.

³ Burke, PB. (Ed.). (2003). *A handbook for new parole board members*. Huntsville, TX: The Association of Paroling Authorities International and Washington, DC: The National Institute of Corrections.

appointed as of January 2014 and four staff members, and reviewed board procedures. In addition, to evaluate compliance with hearing and notification requirements, auditors reviewed statutes and case law, and analyzed data from the Arizona Department of Corrections' Arizona Inmate Management System related to board parole, revocation, and clemency hearings scheduled between January and May 2014.¹ In addition, auditors reviewed an August 2013 joint investigation conducted by the Arizona Department of Administration and the Governor's Office of Equal Opportunity.

- To obtain information for the Introduction and Sunset Factors, auditors interviewed board officials and reviewed information on the Board's Web site. In addition, auditors analyzed data from the Arizona Department of Corrections' Arizona Inmate Management System related to board parole, revocation, and clemency hearings for the period January 1, 2011 through February 4, 2014. Further, auditors reviewed state laws, conducted board hearing and business meeting observations, reviewed agenda postings and board agendas for four board meetings held between October 2013 and December 2013, and reviewed board meeting minutes for five board meetings held between October 2013 and February 2014. Auditors also analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal year 2013, AFIS Management Information System *Status of Budget* screen for fiscal year 2014, and *State of Arizona Appropriations Report* for fiscal year 2015 estimates.
- Auditors' work on internal controls included reviewing the Board's policies and procedures for conflicts of interest, scheduling and noticing hearings, and open meeting law. Auditors' conclusions on these internal controls are reported in Findings 1, 2, and 3, as well as Sunset Factor 5. In addition, auditors conducted data validation work to assess the reliability of the Arizona Department of Corrections' parole and clemency data for the period January 1, 2011 through February 4, 2014, and the Board's revocation hearing data for the period January 2014 through May 2014. Auditors determined that the data was reasonably complete and accurate for the audit's purposes, including for determining the number and timeliness of board hearings.

¹ See Finding 3 textbox regarding case law timeliness guidelines, page 18.

AGENCY RESPONSE



ARIZONA BOARD OF EXECUTIVE CLEMENCY

September 16, 2014

Ms. Debbie Davenport
Auditor General – Arizona
2910 N. 44th Street
Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport,

On behalf of the Board of Executive Clemency I wish to express my appreciation for the review conducted at the Board of Executive Clemency. Your team of auditors acted in a professional and deliberate manner as was viewed most favorably by the employees of the board. I am pleased and take this opportunity to commend their work ethic and professionalism to you.

The Board's final response to the Sunset Review Audit is below. Our final determination was a collaborative effort utilizing the expertise of all members of the Board, our attorney general's representative and current administrator.

Audit Findings

Finding #1

Recommendations: (1.1; 1.2; 1.3; 1.4; 1.5)

Recommendation 1.1 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 1.2 – Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 1.3 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 1.4 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. A review of all standing policies will be conducted following each legislative session to insure compliance with current statutory, administrative and procedural requirements.

Recommendation 1.5 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. Victim Service Advocate policies and procedures are currently under development. Funding is still pending from the grant. The hiring of the specialist is still pending.

Finding #2

Recommendations: (2.1; 2.2; 2.3; 2.4)

Recommendation 2.1 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The Board will utilize current SDM models as guides to develop and implement a decision making best practice policy for Board members. *Notable areas [2.1 b; c; d; e] are currently utilized in the training of new board members but are not formalized into a Board policy. This new training process began in November 2013 and was implemented with the hiring of the first new Board member in 2014.

Recommendation 2.1 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. Implementing this recommendation will take significant research time before it can be implemented but this recommendation will be pursued with an eye towards the development of an Arizona based risk assessment tool. This tool will be adapted for each type of hearing conducted by the Board.

Recommendation 2.2 - Board Response: The revision of current policies and practices will be conducted upon the development and implementation of each risk assessment tool.

Recommendation 2.3 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 2.4 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented

Finding #3

Recommendations: (3.1; 3.2; 3.3; 3.4; 3.5; 3.6; 3.7; 3.8)

Recommendation 3.1 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 3.2 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 3.3 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Recommendation 3.4 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. This has been and will remain a current practice of the Board.

Recommendation 3.5 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The Board can only recommend an action plan to AZDOC on this issue. Discussions on the adoption of a new action plan and/or methodology are underway.

Recommendation 3.6 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The implementation of the recommendation is already underway.

Recommendation 3.7 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The provisions within this recommendation are already underway.

Recommendation 3.8 - Board Response: The finding of the Auditor General is agreed to and the audit recommendation has been implemented. Implementation and use of the new form was initiated last month by AZDOC.

Finding #4

Recommendation 4.1

Board Response: The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

- Note - The Board of Executive Clemency implemented a plan of action to formally separate the singular position of Chairman of the Board/Executive Director into two separate positions on June 25, 2014. The Board expects to complete the Chairman/Executive Director bifurcation process by no later than October 2, 2014.

Sunset Factors

Sunset Factor #1

No current concerns noted.

Sunset Factor #2

Board Response: New Form (Conflict of Interest) - The Board will implement a new Conflict of Interest form. The form will be specifically designed to address public concerns related to the Conflict of Interest of Board members. The Board has adopted a Recusal Policy which addresses many of the concerns related to past appearances of Conflict of Interest.

Board Response: Meeting and Hearing Notification Requirements – The Board is currently in discussion with AZDOC on ways to reduce the time from the re-incarceration of an inmate to an inmate’s revocation hearing. The Board has also requested an appropriation to hire a Hearing Officer. The Hearing Officer duties will include the holding of Probable Cause hearings at an outside or local detention facility.

Board Response: Separating the combined Executive Director and Chairman of the Board positions – As previously stated, the Board expects to have the separation of the singular position into two positions completed by October 2, 2014.

Sunset Factor #3

Board Response: No current concerns noted. The Board has addressed the notification of hearing process and implemented staff procedures and training to insure hearing notification requirements are met. The Board’s website has been totally revamped and significantly more information has been added to enhance public disclosure of our policies, rules, statutes and practices.

Sunset Factor #4

Board Response: No current concerns noted.

Sunset Factor #5

The Board of Executive Clemency has changed our hearing notices to the public. The Board’s web site has also been upgraded to provide more information on our business and hearing practices.

Board Response: The finding of the Auditor General is agreed to and the audit recommendations have been implemented. The Board of Executive Clemency currently utilizes two recording systems for its hearings. Previously the Board utilized only one recording device for this purpose. When that system failed the Board was not in a position to recover the hearing information for the day/s in question because the Board was unaware of the systems failure. The recording device appeared to be running normally but only later did the Board discover that no recording of the events of the day were made. There was also no policy in place that required the downloading of the previous day's events. Since this occurrence the Board has purchased back up recording system software and a back-up recording device should the primary recording device become inoperative. Two recording devices are now utilized to capture Board activity. Additionally, administrative staff personnel are required to obtain a copy of the previous day's recording at the beginning of the next business day. Once the recording is received the Board's internal policy requires this recording be uploaded to the web within three business days. If, when downloading the previous day's recording, it is discovered that the previous day's hearing are not recorded properly the Chairman of the Board will be alerted of the device's failure prior to the next set of hearings taking place and the replacement recording device will be utilized. Since the failure of the recording device in October, with the exception of when the Board travels to external facilities, the Board's policy is to utilize two recording devices to capture Board actions.

Board Response: The finding of the Auditor General is agreed to and the audit recommendations have been implemented. The Board initiated a policy to get hearing information on the web more readily. Our new devices permit the daily downloading of the previous day's hearing. With the implementation of the new recording devices with their web format capabilities the adding of new recorded information should be completed quickly and within expected time frames. The website itself will be amended to add the advisory disclaimer notice as recommended.

Sunset Factor #6

No concerns noted.

Sunset Factor #7

No concerns noted.

Sunset Factor #8

No concerns noted.

Sunset Factor #9

No concerns noted.

Sunset Factor #10

No concerns noted.

Sunset Factor #11

No concerns noted.

Sunset Factor #12

No concerns noted.

The Board of Executive Clemency wishes to express their appreciation for the work performed by your staff and looks forward to continued cooperation and support as we move forward to implement your recommendations for improvement.

Sincerely,

Brian L. Livingston
Chairman/Executive Director

Performance Audit Division reports issued within the last 24 months

12-04	Arizona State Parks Board
12-05	Arizona State Schools for the Deaf and the Blind
12-06	Arizona Health Care Cost Containment System—Medicaid Fraud and Abuse Prevention, Detection, Investigation, and Recovery Processes
12-07	Arizona Health Care Cost Containment System—Sunset Factors
13-01	Department of Environmental Quality—Compliance Management
13-02	Arizona Board of Appraisal
13-03	Arizona State Board of Physical Therapy
13-04	Registrar of Contractors
13-05	Arizona Department of Financial Institutions
13-06	Department of Environmental Quality—Underground Storage Tanks Financial Responsibility
13-07	Arizona State Board of Pharmacy
13-08	Water Infrastructure Finance Authority
13-09	Arizona State Board of Cosmetology
13-10	Department of Environmental Quality—Sunset Factors
13-11	Arizona State Board of Funeral Directors and Embalmers
13-12	Arizona State Board for Charter Schools
13-13	Arizona Historical Society
CPS-1301	Arizona Department of Economic Security—Children Support Services—Foster-Home Recruitment-Related Services Contracts
13-14	Review of Selected State Practices for Information Technology Procurement
13-15	Arizona Game and Fish Commission, Department, and Director
14-101	Arizona Department of Economic Security—Children Support Services—Transportation Services
14-102	Gila County Transportation Excise Tax
14-103	Arizona State Board of Dental Examiners
14-104	Arizona Office of Administrative Hearings

Future Performance Audit Division report

State of Arizona Naturopathic Physicians Medical Board