

Committee Report, Vol. 10, No. 3
Nebraska Board of Parole

September 2003

**Performance
Audit
Section**

*Legislative Research Division
Nebraska Legislature*

Legislative Performance Auditing

Legislative performance audits are designed to provide legislative oversight of state agency programs and to improve program efficiency and effectiveness. They are conducted under the supervision of the Legislative Performance Audit Committee (committee), a special committee of the Nebraska Legislature.

Membership on the committee includes the Speaker of the Legislature, chairpersons of the Executive Board and the Appropriations Committee, and four other members of the Legislature, chosen by the Executive Board. The committee's responsibilities include selecting audit topics; defining the scopes of audits; adopting recommendations based on reports prepared by the Performance Audit Section (section); holding public hearings and sponsoring legislation, as necessary, in conjunction with audits; and monitoring agency compliance with committee recommendations.

The section, staffed by four professional analysts, is housed within the Legislative Research Division (LRD) and supervised by the Director of Research. In conducting audits, analysts are subject to the Nebraska statutes and provisions of the Government Auditing Standards published by the Comptroller General of the United States, General Accounting Office. Statutes governing the performance audit process in Nebraska are found in Chapter 50, article 12, of the Nebraska Revised Statutes.

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PREFACE TO THE COMMITTEE REPORT

A number of changes in law and key personnel have occurred between this report's production by the Legislative Performance Audit Section and its public release by the Legislative Performance Audit Committee. To prevent confusion, these changes are noted here.

First, the names of both the committee and the section were changed as a result of the enactment of LB 607 (2003). Prior to LB 607, the committee was known as the Legislative Program Evaluation Committee, and the section was known as the Legislative Program Evaluation Unit. We have updated the names of these entities throughout the report, where possible, but some instances of the former names remain. We could not, for example, change reproductions of signed and dated letters. We apologize for any confusion this might cause.

Second, LB 607 expanded the membership of the committee from five members to seven. The committee's two additional members are Senator Vickie McDonald and the Speaker of the Legislature, Senator Curt Bromm.

Finally, the Parole Board has a new chairperson. The chairperson who presided during the course of the audit, Linda Krutz, was appointed chief of the Community Corrections Council, effective 4 August 2003. Her position has been filled by Ken Vampola, an attorney and former Winnebago Tribal Court Judge. Due to the timing of this change, Mr. Vampola's only opportunity to comment formally on the audit was in conjunction with the board's second response, which appears as an addendum to this report.

Part I

Executive Summary

EXECUTIVE SUMMARY

The audit described in this report was undertaken at the request of the Legislative Performance Audit Committee (committee). The committee asked us (the Legislative Performance Audit Section) to evaluate the Nebraska Board of Parole (board). The scope statement adopted by the committee to guide the audit instructed us to describe the parole process and evaluate its efficiency; analyze the board's recordkeeping; and, to the extent allowed by the board's recordkeeping, examine parole trends over the past decade.

Background

The board is composed of five full-time members, appointed by the governor and approved by the Legislature, who serve six-year terms. The governor designates one member to serve as chairperson. The board has a staff of five full-time employees and one part-time employee, and an annual budget of approximately \$650,000 per year.

The board's primary responsibility is to decide when and if an inmate serving time in a facility under the jurisdiction of the Department of Correctional Services (department) should be paroled. The board is also responsible for prescribing the terms and conditions of an inmate's parole.

The board discharges its responsibilities by conducting parole reviews, parole hearings, and parole-violation hearings. The board is not responsible for an inmate's supervision while on parole; that task falls to the department's Office of Parole Administration.

Over the past decade, the number of inmates granted parole has remained relatively steady, despite an increase in Nebraska's prison population. Today, more inmates serve out

their sentences than are released on parole. This means that most inmates are unsupervised upon release and have not had the benefit of a transitional period as they re-enter the community. This situation has led to scrutiny of the board's decisions and allegations that it releases too few inmates on parole.

The Parole Process

When an inmate enters the correctional system, the department calculates his or her parole-eligibility and mandatory-discharge dates, which are based on the minimum and maximum sentences imposed by the sentencing judge. By law, an inmate is eligible for parole after serving half of the minimum sentence and, if not paroled, is mandatorily discharged after serving half of the maximum sentence (the other half is waived at the outset as time off for good behavior, which may be added back in response to disciplinary problems).

After the dates are calculated, the department draws up a personalized plan that lays out rehabilitative goals for the inmate to meet while in prison. For example, the plan might recommend that the inmate work on a GED, take parenting or anger-management classes, or enroll in substance-abuse treatment programs. Progress toward the goals set forth in the personalized plan is measured through institutional progress reports that are kept in the inmate's file and periodically updated. Progress reports contain information such as work reviews, misconduct reports, and departmental recommendations regarding parole.

Parole Reviews

By law, the board must schedule a parole review for each inmate during his or her first

year of incarceration, as well as within 60 days of his or her parole-eligibility date. During a parole review, which is held in private, the board interviews the inmate, examines his or her progress reports, and determines the feasibility of parole. If an inmate's sentence is long enough, he or she is reviewed periodically between the initial review and his or her parole-eligibility-date review. The majority of the board's time is spent conducting parole reviews; it averages 341 each month.

If, after a parole review, the board decides that a parole-eligible inmate's institutional behavior and progress are satisfactory, the inmate is scheduled for a parole hearing (described below). However, if the inmate is not yet eligible for parole, or is eligible but has behaved poorly or made little progress, the board will schedule the inmate for another review. In any event, the board is always free to supplement the inmate's personalized plan with recommendations for additional education, treatment, and counseling.

Parole Hearings

Each month, the board conducts an average of 71 parole hearings, at which it makes the final decision to grant or deny an inmate's parole. In general, parole hearings are more formal than parole reviews. They are open to the public, anyone who wishes to testify for or against an inmate's parole may do so, testifiers are sworn in, and inmates are entitled to representation by counsel.

At a parole hearing, board members have access to the same information they have at a review, as well as a parole plan that outlines where the inmate plans to live, work, and receive treatment, if necessary. If the inmate is able to show that he or she has behaved well and made progress in prison, the board will likely vote to parole. During the past three years, the board has granted parole at nearly 80 percent of parole hearings held.

Once on parole, the parolee must meet standard conditions such as reporting to a parole officer, refraining from criminal conduct, and abstaining from drug and alcohol use. The board may also establish "special" conditions. For example, the board may require the parolee to submit to electronic monitoring or to seek treatment or counseling in the community.

The parolee is generally released immediately after the hearing and must contact his or her parole officer within 24 hours and periodically after that. Parole lasts until the individual's mandatory-discharge date.

Parole-Violation Hearings

If a parole officer suspects that a parolee has violated a condition of parole, the officer conducts an investigation, and the Office of Parole Administration may hold a preliminary hearing. If the person conducting the hearing finds that a violation likely occurred, he or she may issue a warning or reprimand, impose an administrative sanction such as increasing the level of supervision, or, for serious violations, schedule a parole-violation hearing before the board.

At a parole-violation hearing, the board determines whether a violation occurred, and, if so, decides whether to continue parole, impose penalties like those mentioned above, or send the parolee back to prison. As is the case with parole hearings, violation hearings are open to the public, anyone may testify (under oath), and the parolee is entitled to counsel. In recent years, the board has held approximately 22 violation hearings per month.

Findings and Recommendations

During our observation of parole reviews and hearings, we did not identify significant process-related inefficiencies. In general, the board and its staff members conduct reviews and hearings in an efficient and effective manner.

However, we have several concerns relating to the overall structure and internal management of the board.

First, we found that the board lacks a well-defined management structure. Current statutes and board procedures provide almost no guidance to the chairperson and other board members regarding the chair's authority and the scope of his or her administrative duties. This lack of guidance has historically been interpreted by the board to mean that the chair has no authority over the other board members.

However, in order to function efficiently and effectively, a state agency must have an identifiable leader and clear lines of authority. The board's lack of organizational structure has contributed to tension among board members, tension between the board and the department, and the failure to develop an adequate recordkeeping system, as discussed below. Furthermore, the only operational consistency and institutional memory is provided by an experienced staff member with a job classification of Administrative Assistant II. The committee recommends that the board's statutes and regulations be changed to set out a more clearly-delineated and appropriate management and staffing structure.

Second, we found that the board's record-keeping leaves much to be desired. Currently, parole records are kept on paper, primarily in inmates' institutional files. This approach is probably as efficient as a paper-and-file system is going to get, however, it does not adequately serve the board, nor does it allow for meaningful policy analysis. Because the system does not facilitate the aggregation of data across a given population of inmates, the summary information available to the board, corrections officials, legislators, and the public is minimal. This audit provided first-hand evidence of that: Because of the absence of electronic data, we could only speculate about the causes of various parole trends. To address

this situation, the committee recommends that the board develop a record-keeping database using commercially available software and modify its documentation accordingly.

The committee also recommends that the Legislature examine the board's statutes and amend or repeal outdated or confusing sections. Distinctions between parole reviews and parole hearings should be made clear, and unnecessary requirements should be removed.

Part II

Performance Audit Section Report

Performance Audit Section Report
Nebraska Board of Parole

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The Board of Parole cooperated fully in providing access to information necessary for this audit and in making its staff and resources readily available. The Legislative Performance Audit Section would like to particularly acknowledge and thank for their time and assistance: Linda Krutz, Ken Vampola, Esther Casmer, Bob Boozer, Mike Gomez, Jim Pearson, Harold Clarke, Ron Riethmuller, Jim McKenzie, Connie Nemece, Trudy Clark, and the board's entire staff.

SECTION I

INTRODUCTION

Pursuant to Neb. Rev. Stat. sec. 50-1205(1), the Legislative Performance Audit Committee (committee) directed the Legislative Performance Audit Section (section) to audit the Nebraska Board of Parole (board). The board consists of five members, whose duty it is to determine if and when parole-eligible inmates will be released from the custody of the Department of Correctional Services (department) and to set the conditions of their paroles.¹ The board arrives at its decisions by interviewing inmates and reviewing their institutional records. While administratively associated with the Board of Pardons, the board exercises its own authority and is independent of the Board of Pardons as well as the department.²

The committee requested the audit on 14 November 2002 and adopted a scope statement on 3 February 2003. The audit began the next day with a letter from Senator Chris Beutler, chairperson of the committee, to Linda Krutz, chairperson of the board.

Scope of the Audit

The scope statement adopted by the committee instructed the section to:

- describe and analyze the parole process to determine if, and identify ways in which, it could be made more efficient;
- analyze the extent to which the board maintains records in a format that allows it to easily report its performance to the Legislature and other policy-makers; and

- to the extent allowed by the board's recordkeeping, analyze parole trends over the past decade with an eye toward the causes and effects of such trends.

Contents of the Report

Section II of this report describes the board and the parole process, parole trends, and some common criticisms of the board. Section III discusses ways to improve efficiency and recordkeeping.

Methodology

The section used standard qualitative-research methods to complete this audit. We interviewed and interacted with board members and the board's staff on numerous occasions. We observed a number of parole reviews, parole hearings, and parole-violation hearings, including the board's executive sessions. We reviewed the institutional records of more than 200 inmates to see how records are kept and to measure the extent to which the department's recommendations and the board's decisions coincide. We also spoke to department staff members including the Director, the Records Administrator, and employees in the Office of Parole Administration.

¹ We use the term custody here to mean actual physical custody, not supervision. Parolees are still under the supervision of the department through its Office of Parole Administration and remain so until their maximum sentence, less good time, is served.

² See Neb. Rev. Stat. sec. 83-188.

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SECTION II

THE PAROLE PROCESS, TRENDS, AND CRITICISMS

The Nebraska Board of Parole (board) was established by the Legislature in 1969 in response to a constitutional amendment passed in 1968.³ The board consists of five members, appointed by the Governor with legislative approval, who serve six-year terms.⁴ By statute, at least one board member must belong to an ethnic minority, one must be female, and one must have a professional background in corrections.⁵ The governor designates one member as chairperson, who is responsible for the administration and operation of the board.⁶ Board membership is a full-time position; the chairperson earns \$65,000 annually, the vice-chairperson earns \$62,000, and the remaining members earn \$59,000.⁷

The board is staffed by five full-time employees and one part-time employee, all of whom hold administrative positions.⁸ The board's budget is dedicated almost entirely to salaries and benefits; it contemplates minimal operating expenses.⁹ In FY2001-02, for example, the board expended nearly \$622,000—56 percent for board-member salaries, 35 percent for

staff-member salaries, 8 percent for operating expenses, and 1 percent for travel expenses.¹⁰

As noted in Section I, the board's primary duty is to determine if and when parole-eligible inmates will be released from the custody of the Department of Correctional Services (department) and to set the conditions of their paroles. The board discharges this duty by conducting parole reviews, parole hearings, and parole-violation hearings. These three kinds of hearings are described below.

The Parole Process

When an inmate enters the correctional system, the department calculates his or her parole-eligibility date¹¹ and mandatory-discharge date,¹² which are based on the court-imposed minimum and maximum sentences.¹³ An inmate is eligible for parole after serving half of his or her minimum sentence and is mandatorily discharged after serving half of the maximum sentence, *provided there is no loss of good time*.¹⁴ For example, assuming no loss of good time, an inmate sentenced to 3 to 5 years actually serves 1.5 to 2.5 years. If the inmate in the above scenario were to lose all of his or her good time, he or she would end up serving the maximum sentence, *i.e.*, 5 years. It is

³ See Neb. Const. Art. IV, sec. 13. The Nebraska Board of Parole's (board's) purpose and duties are set forth in Neb. Rev. Stat. sec. 83-188 et seq. For nearly 70 years prior to the board's establishment, the parole function was exercised by the Board of Pardons, which consists of the Governor, the Secretary of State, and the Attorney General.

⁴ Members can be reappointed, and there are no term limits.

⁵ Neb. Rev. Stat. sec. 83-189. There are currently three members of ethnic minorities, two women, and three members with correctional (or at least criminal justice) backgrounds on the board.

⁶ Neb. Rev. Stat. sec. 83-192.

⁷ Neb. Rev. Stat. sec. 83-191. Board members may not hold any other public office or engage in another business or profession. Salaries are set by the Governor; the salaries shown are rounded to the nearest thousand.

⁸ The board's part-time employee divides her time between the board and the Board of Pardons, equaling one full-time position.

⁹ Neb. Rev. Stat. sec. 83-1,127.01 requires the Department of Correctional Services (department) to provide accounting and payroll services without cost to the board.

¹⁰ We reviewed the board's expenditures for the past five fiscal years, and the FY2001-02 distribution of expenditures is representative. Since FY1997-98, the board's expenditures have increased a total of 14.43 percent.

¹¹ See Neb. Rev. Stat. sec. 83-1,110.

¹² See Neb. Rev. Stat. sec. 83-1,106.

¹³ Conversation with Ron Riethmuller, Department of Correctional Services Records Administrator, 24 February 2003.

¹⁴ *Id.* When an inmate is incarcerated, he or she is automatically awarded good time equaling 50 percent of the maximum sentence that was imposed. Good time can be lost for a number of disciplinary reasons, but it can also be restored as a reward for good behavior. Thus, an inmate's mandatory-discharge date can move around; as a result, the mandatory-discharge date is sometimes referred to as the tentative release date.

important to note that, regardless of their crimes or institutional behavior, nearly all inmates are eventually released from prison.¹⁵

Inmates entering the correctional system begin at the department's Diagnostic and Evaluation Center (DEC). The most important thing that happens at DEC in terms of parole is an investigation of an inmate's background, called a classification study. The classification study contains a brief summary of the current offense; the inmate's criminal, educational, mental-health, and substance-abuse history; and programming suggestions for the inmate. The programming suggestions become the basis of the inmate's personalized program plan (personalized plan),¹⁶ which is comprised of the department's programming goals for the inmate and a timeline for completion.¹⁷ It can take up to six months for DEC staff members to complete an inmate's classification study and draw up a personalized plan, after which the inmate is transferred to a permanent facility.¹⁸ After the transfer, the board meets with the inmate for an initial parole review.

Parole Reviews

The purpose of parole reviews is to examine inmates' institutional progress in terms of be-

havior and programming. For inmates that are not yet eligible for parole, reviews serve to encourage them to begin programming so they are ready for parole when they become eligible. For inmates that are already parole eligible, reviews allow the board to determine whether parole is feasible. By statute, the board must review each inmate within the first year of incarceration¹⁹ and when inmates are within 60 days of their parole-eligibility date.²⁰ The frequency of reviews between the initial review and the parole-eligibility-date review depends on the length of his or her sentence.^{21,22}

Before each review, board members are provided with a copy of an inmate's classification study, a log of recent misconduct reports, and the inmate's most recent institutional progress report. The progress report (prepared by the unit manager and the case manager at the institution) contains the inmate's personalized plan, work reviews, commentary on how the inmate interacts with staff and other inmates, programming progress, and the institution's recommendations regarding parole.

During a review, the board interviews the inmate and has the opportunity to ask questions about his or her progress. Under statute, reviews are to be informal,²³ and board policy

¹⁵ According to the Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002, 93.6 percent of inmates have a mandatory-discharge date. Thus, regardless of their institutional behavior (unless it results in another criminal sentence), they will eventually be released.

¹⁶ Neb. Rev. Stat. sec. 83-1,107.

¹⁷ Under Neb. Rev. Stat. sec. 83-1,107, the department must provide programs that allow the inmate to comply with the personalized plan. Programming includes academic and vocational education, substance-abuse treatment, mental-health and psychiatric treatment, and work programs.

¹⁸ The Diagnostic and Evaluation Center attempts to give priority to the evaluation of inmates who have parole-eligibility dates that fall within one year of their incarceration dates. Such inmates are generally evaluated within four months and transferred to a permanent facility, where they await an initial parole review. The process for inmates with more remote parole-eligibility dates may take up to six months. Telephone conversation with Trudy Clark, Nebraska Board of Parole Administrative Assistant II, 25 March 2003.

¹⁹ Neb. Rev. Stat. sec. 83-192. At the initial review, the summary of the inmate's crime (from the classification study) is read into the record. Board members may ask questions about the crime, provided that the case is not being appealed.

²⁰ Neb. Rev. Stat. sec. 83-1,111.

²¹ The review schedules for all sentence lengths are set forth in Neb. Rev. Stat. sec. 83-192. For example, if an inmate's parole-eligibility date is within five years of the date of incarceration, the inmate must be reviewed annually; but if the inmate's parole-eligibility date is 10-30 years after the date of incarceration, the board only has to review the inmate every five years.

²² An inmate who is scheduled for a review may waive the right to appear by filing a waiver form with the board. When this happens, the board does the review based on institutional reports, reading the information into the record and noting that the inmate waived. If the inmate is unavailable for some other reason, the board defers the review until the inmate is available.

²³ See Neb. Rev. Stat. sec. 83-1,111.

requires them to be private.²⁴ Institutional counselors may be present at reviews, however, information discussed is considered confidential.²⁵ Reviews are tape-recorded, as are parole hearings and parole-violation hearings.²⁶

After a review, in executive session, the board decides either to schedule another review or to set a parole hearing for the inmate if he or she is eligible. If the board recommends another review, the next review date is scheduled, and the reasons for deferment, along with programming recommendations are stated for the record. If the board recommends setting a parole hearing for the inmate, a hearing date is scheduled and programming recommendations are made. Within three weeks, the inmate is sent a form letter (see Appendix A) that sets forth the board's decision, the date of the inmate's next review or hearing, and any recommendations made by the board. Copies of the letter are also sent to the inmate's case manager and put in the inmate's file.²⁷

An inmate who has been scheduled for a parole hearing must draw up a parole plan. A parole plan outlines where the inmate will live and work if paroled, and what community-based treatment the inmate will participate in if the board is likely to impose such special conditions.²⁸ Before the hearing, a parole officer checks the information contained in the inmate's parole plan to make sure it is accu-

rate and acceptable. The parole officer reports the results of his or her investigation to the board in a placement report.

Parole Hearings

At a parole hearing, the board decides to grant or deny an inmate's parole. By the time an inmate appears before the board at a hearing, he or she has most likely been reviewed several times, and the board is reasonably well-informed about the inmate's institutional behavior and programming progress. Unless an inmate has received misconduct reports or has disregarded the board's recommendations, it is very likely that the board will grant parole at the hearing. Over the past three years, the board has granted parole at nearly 80 percent of the parole hearings held.²⁹

Before a parole hearing, board members are provided with the same information they have at a review, plus the inmate's parole plan, the parole officer's placement report, letters of support or opposition, and a psychological evaluation, if one was requested.³⁰

During a hearing, the board reviews the parole plan and asks the inmate any questions it has. Parole hearings are different from reviews in that they are formal—testifiers are sworn in—and open to the public. Both supporters and opponents may be present at the hearing, and anyone wishing to testify can do so.³¹ After listening to testimony, the board

²⁴ In the opinion of the Attorney General (*see* Opinion 93065), reviews are not subject to the open-meetings law; therefore the board's policy of privacy is appropriate. However, there appears to be no legal *requirement* that reviews be private.

²⁵ Nebraska Board of Parole Policy and Procedure Manual [hereinafter Board Manual], B-1.

²⁶ Due to limited resources, board staff do not transcribe any review or hearing tapes unless specifically requested. The tapes can be subpoenaed, so the board does not question the inmate if the case is under appeal, as noted *supra* note 18.

²⁷ Board Manual, B-4.

²⁸ Nebraska Department of Correctional Services Adult Parole Administration Parole Handbook [hereinafter Parole Handbook], 2.

²⁹ This percentage is calculated based on data from the Annual Report of the Nebraska Board of Parole, July 1, 2001 to June 30, 2002. We noticed a number of minor errors in the board's annual report that will be corrected in subsequent reports.

³⁰ The board requests a psychological evaluation prior to a hearing if the inmate is serving a sentence for manslaughter, first degree murder, or second degree murder (Board Manual, B-12). Psychological evaluations are classified documents; the board cannot refer to them directly during a hearing. (Board Manual, D-1).

³¹ Board Manual, B-5. To comply with the Nebraska open meetings law, the staff assistant in charge of hearings sends hearing-notification letters to officials in the sentencing county (as well as victims who have requested notification), distributes a monthly hearing docket to individuals and

may go into executive session for discussion. After the executive session, if one was called, a motion is made in the presence of the inmate to grant or deny parole. Members vote by secret ballot, and the votes are subsequently read into the record.³² If parole is granted with special conditions, the conditions are also read into the record. If parole is denied, the board can schedule another hearing or a review.

After a parole hearing and prior to release from custody, parolees sign parole certificates, agreeing that they will refrain from criminal conduct, meet family responsibilities, participate in counseling or substance-abuse treatment, and satisfy any special conditions of parole. Parolees may also have to agree to submit to periodic testing for drug and alcohol use.³³ Parolees are usually released immediately after their hearings, and they must report to their parole officer within 24 hours.

Parolees remain on parole until they complete their maximum sentence, less good time.³⁴ The parolee's level of supervision—intensive, maximum, medium, minimum, or conditional—is assigned by the parole officer unless the board specifies a level.³⁵ However, all parolees who were incarcerated for violent crimes are initially placed on intensive super-

groups that have requested notification of hearings, and prepares news releases for publication.

³² The board has adopted a policy of voting by secret ballot for parole and parole-violation hearings so board members do not feel pressured to vote with the majority and so inmates cannot identify anyone who cast a deciding vote. The votes are read aloud after all board members are done voting.

³³ The full list of parole conditions can be found at Neb. Rev. Stat. sec. 83-1,116.

³⁴ See *supra* note 13. In addition to the good time automatically granted toward their mandatory-discharge date, parolees are awarded extra good time while on parole at the rate of two days per month. Neb. Rev. Stat. sec. 83-1,108. Parolees can also lose good time while on parole, based on their conduct.

³⁵ Parole officers determine the level of supervision using two assessment tools: the Assessment of Parolee Risk and the Assessment of Parolee Needs. Policies regarding parolee classification and supervision are contained in the department's Operational Memorandum 410.02.8.01.

vision.³⁶ Depending on the level of supervision, parolees can be required to contact their parole officers as often as once a week (under intensive supervision) or as infrequently as every six months (under conditional supervision).³⁷

Parole-Violation Hearings

If at any time a parole officer suspects that a parolee has violated a condition of parole, the officer must conduct an investigation.³⁸ If the parole officer believes that the parolee is likely to flee or endanger lives or property, the officer also has the authority to arrest the parolee, even without a warrant.³⁹ If the investigation suggests that the parolee has violated a condition of parole, a hearing officer with the Office of Parole Administration holds a preliminary hearing.⁴⁰ If the hearing officer agrees that the parolee has violated a condition of parole, the Office of Parole Administration asks the board to hold a parole-violation hearing.⁴¹ Before a violation hearing, the Office of Parole Administration provides the board with a summation packet that includes the results of the investigation and the preliminary hearing.⁴²

³⁶ Intensive parole supervision usually lasts 90 days. However, if the board orders a parolee to be put on extended intensive parole supervision, he or she will stay at that level of supervision until the board approves a reduction. Board Manual, C-10.

³⁷ In addition to meeting with the parolee, the parole officer checks in periodically with the parolee's employer and any treatment providers. The parole officer also conducts periodic drug and alcohol tests, if necessary.

³⁸ Neb. Rev. Stat. sec. 83-1,119.

³⁹ *Id.*

⁴⁰ A preliminary hearing is required by *Morrissey v. Brewer*, 408 U.S. 471 (1972). At the preliminary hearing, the parolee has the right to testify on his own behalf, introduce witnesses or documents relative to his defense, cross-examine the state's witnesses, and have legal counsel.

⁴¹ "Less serious violations may be processed with a case conference or an administrative hearing, while the parolee remains out of custody in the community." Parole Handbook, 6.

⁴² Specifically, the summation packet contains a summary of the conviction information, allegations of the parole violation(s), records of any previous violations, a summary from the preliminary hearing, the parole officer's investigation report, the police report (if one is available), and the recom-

During a violation hearing, the circumstances of the alleged violation are read into the record, and the parolee responds by pleading guilty, not guilty, or remaining silent. As with parole hearings, violation hearings are open to the public; a parolee may have an attorney present, and if there are any supporters, witnesses, law-enforcement personnel, or parole officers who wish to speak, they may do so. The hearing officer makes a motion to revoke parole or continue parole with additional conditions or loss of good time. As at parole hearings, board members vote via secret ballot and the votes are read into the record at the conclusion of voting.

Conclusion

In our observations of the board and the parole process, we did not identify any significant inefficiencies in the process itself that we believe need to be corrected. In general, the board and its staff members conduct reviews, parole hearings, and violation hearings in an efficient and effective manner. Board members and staff members understand their roles in the process and seem to work well with departmental staff members that are also involved.

External Factors That Impede the Parole Process

The parole process described above is the typical process that most inmates go through. However, a number of variables can complicate matters, either by postponing the parole-eligibility date or interfering with the scheduling of hearings.

In some cases, for example, the review process is slow to get started because of backlogs at DEC—the department’s most overcrowded facility. By statute, the board must

mendation from the Office of Parole Administration regarding the continuation of parole. Telephone conversation with Jim McKenzie, Administrator of the Office of Parole Administration, 27 March 2003.

review each inmate within the first year of incarceration.⁴³ The board prefers to conduct the initial review as soon as possible after the inmate enters the correctional system; however, evaluation and processing at DEC can take up to six months, causing the board to delay the initial review until it has the inmate’s classification study.

Another variable is the inmate’s institutional behavior, which can affect his or her parole-eligibility date. Under current statutes, when an inmate receives a misconduct report for drug or intoxicant abuse, the parole-eligibility date is automatically moved back one year.⁴⁴ Even when the parole-eligibility date is unaffected, an inmate’s institutional behavior is an important factor in setting hearings and granting parole. The board is much more likely to grant parole to an inmate who avoids getting misconduct reports.⁴⁵ Many inmates with poor conduct waive their appearances before the board.⁴⁶

Issues relative to the programming offered by the department also affect the parole process. Current statutes prohibit inmates from being paroled if they refuse to comply with their personalized plans.⁴⁷ Even when inmates wish to comply, it is sometimes difficult to get programming in the department. The board’s solution to this dilemma is to require inmates to make an effort to get the programming by enrolling or getting on a waiting list—the board does not necessarily require the programming itself.

In addition to the problems the department has delivering programming, it occasionally has problems gathering information the board

⁴³ See Neb. Rev. Stat. sec. 83-192.

⁴⁴ Neb. Rev. Stat. sec. 83-1,110(3). Legislative bill 46 (2003) attempts to change this by eliminating the drug-misconduct punishment entirely.

⁴⁵ Of course, misconduct reports vary in seriousness, and the board takes this into account when reviewing inmates’ files. Board Manual, C-7.

⁴⁶ See *supra* note 21.

⁴⁷ Neb. Rev. Stat. sec. 83-1,110(4).

requests. Progress reports are sometimes unavailable, which may cause the board to postpone a review. In addition, as noted above, the board requests psychological evaluations for certain inmates prior to a parole hearing.⁴⁸ These evaluations are sometimes not produced in a timely fashion, and the board is left without key information at the hearing.

Parole Trends

Over the past ten years, the growth of the prison population has put additional pressure on the board and increased the level of scrutiny given to its decisions. A decade ago, the average monthly prison population reported by the department was 2,609 inmates;⁴⁹ today it is over 4,200 inmates (a ten-year increase of nearly 61 percent). A decade ago, the number of annual admissions due to new sentences was 1,278 inmates; today it is over 1,860 inmates (a ten-year increase of nearly 46 percent). Nebraska recently opened a new correctional facility in Tecumseh; simply transferring inmates to reduce overcrowding at other facilities has nearly filled it to capacity. Even with the new facility, the department is operating at 132 percent of overall capacity.⁵⁰

Parole and Mandatory Discharge

As noted in our review of the parole process, almost every inmate will eventually be released.⁵¹ That release may occur because of mandatory discharge or parole. As shown in Appendix B, mandatory discharges have outnumbered paroles consistently since FY1994-95, and the gap between those numbers appears to be growing. From a public policy standpoint, this means that most inmates are

not being supervised or transitioned into the community upon release. When inmates are mandatorily discharged, they are given \$100, unless they have their own money, and are simply set free.⁵²

Mandatory discharges are outstripping paroles largely because of the prevalence of drug offenders in the state's prisons. In FY2001-02, drug offenses accounted for 26.8 percent of the department's new admissions (theft and burglary, common drug-related crimes, accounted for another 21.3 percent).⁵³ Such inmates often have short sentences and do not—or cannot, if the sentence is short enough—avail themselves of parole. There is nothing that the board can do in many of these cases. Last year, for example, 183 inmates were mandatorily discharged from DEC before completion of their initial evaluation period; an additional 80 inmates had sentence structures that made parole impossible—their parole-eligibility and mandatory discharge dates were the same.⁵⁴ Furthermore, 460 inmates were mandatorily discharged after waiving either their parole reviews or their parole hearings.⁵⁵ The drug-misconduct and personalized-plan statutes also contribute to the number of mandatory discharges by postponing parole eligibility in some cases.⁵⁶

Whatever the cause, the trend shown in Appendix B is clear: The number of new sentences and the number of mandatory discharges are increasing while the number of paroles is remaining *relatively* steady (the number of paroles is steady *in comparison with the number of mandatory discharges*, but see the next subsection). Again, this is not necessarily a result of something the board is or is not do-

⁴⁸ See *supra* note 29.

⁴⁹ Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002.

⁵⁰ Number current as of 17 March 2003. The most crowded facility is the Diagnostic and Evaluation Center, which operates at nearly 240 percent of capacity. The least crowded is the new Tecumseh facility, which operates at nearly 90 percent of capacity.

⁵¹ See *supra* note 14.

⁵² The department will also supply inmates with a bus ticket and a ride to the bus station if they wish. Telephone conversation with Ron Riethmuller, 31 March 2003.

⁵³ Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002.

⁵⁴ Data furnished by the board in response to a draft of this report, 15 May 2003.

⁵⁵ *Id.*

⁵⁶ See *supra* notes 43 and 45 and accompanying text.

ing, but it is a trend that needs to be addressed if the Legislature is concerned with the lack of postrelease supervision.

Fluctuation in Parole Numbers

Over the past decade, the board has paroled an average of 704 inmates each year.⁵⁷ However, the exact number of parolees during that time has fluctuated between 817 inmates in FY1993-94 and 610 inmates in both FY1995-96 and FY2000-01. The fluctuation is shown graphically in Appendix C.⁵⁸ It is difficult to pin down the exact cause of the fluctuation; indeed, the board cannot explain it. However, there are a number of factors that probably enter in.

Political pressure has no doubt played a role in the board's decisions over time. Following some high profile cases in the early 1990s (when paroles were on the rise), then-Governor Ben Nelson tried to fire a number of parole board members.⁵⁹ Nelson gave up the quest, but he continued to be vocal about his displeasure with the board and eventually replaced the chairperson in 1994 (when paroles were at their peak) with another mem-

ber.⁶⁰ After the new chairperson was appointed, paroles dropped for a couple of years before rising again in the mid-1990s.

Legislation has also had an impact. In 1995, the Legislature passed LB 371, which made two statutory changes that have affected parole decisions. These statutes have already been discussed. One requires the department to automatically move back an inmate's parole-eligibility date one year for each drug-misconduct report received in prison.⁶¹ The other prohibits the parole of inmates who refuse to comply with their personalized plans.⁶² Paroles rose for a short period after the passage of LB 371, before the laws were implemented, and then dropped steadily until 2000.

Paroles are currently on the rise again. One possible reason is that the department has stepped up measures to reduce the availability of drugs in prison.⁶³ Improved security and new drug-detection technology have reportedly reduced the amount of drugs entering the institutions.⁶⁴ This reduction in availability has presumably reduced the number of cases in which drug misconduct has delayed inmates' parole-eligibility dates.

Another possible reason paroles are on the rise has to do with the fact that the board has adjusted its approach to inmate participation in programming and parole eligibility. The board told us that, at one time, it used substance-abuse treatment as a parole prerequisite

⁵⁷ Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002. Data are taken from the department's annual report because the board did not keep its own records until three years ago. For those three years, there is a discrepancy between the numbers reported by the department and the board that neither was able to explain. *See infra* note 79 and accompanying text. When numbers disagreed, we used the department's figures, not because we believe they are more accurate, but because they have been kept longer and thus allow us to look at trends.

⁵⁸ The number of paroles shown in Appendix C is the same as that shown in Appendix B, just on a different scale to highlight the fluctuation.

⁵⁹ Two of the more well-known cases involved parolees Ronald Fort, who committed murder while on parole, and Thomas Freeman, who committed several acts of first-degree sexual assault while on parole. A state hearing officer ruled that the Governor did not have the authority to fire board members because he disagreed with their decisions. Neb. Rev. Stat. sec. 83-190 says that members of the board may only be removed for disability, neglect of duty, or malfeasance, and then only after a hearing in front of the Board of Pardons.

⁶⁰ The other member was a former chairperson, Ron Bartee, who left the board in 1992 to take a federal parole position. Nelson reappointed him to the board in 1994 and designated him chairperson, replacing Ethal Landrum.

⁶¹ *See* Neb. Rev. Stat. sec. 83-1,110(3).

⁶² *See* Neb. Rev. Stat. sec. 83-1,110(4).

⁶³ The department's efforts were reported in a Lincoln Journal Star article entitled *Fewer Finding Drugs Behind Bars*, 8 March 2003.

⁶⁴ E-mail from Harold Clarke, Director of the Department of Correctional Services, 7 April 2003. According to Clarke, the department's new tobacco-free policy may also have had an effect in that inmates may now concentrate on smuggling cigarettes instead of drugs, a trend that has been noticed in other states that have gone tobacco free.

in an effort to reduce revocations and recidivism.⁶⁵ The board has become more flexible because lack of programming was holding inmates up.

An alternative explanation for the fluctuation in the number of inmates paroled is that it is “natural.” That is, it is *possible* that trends in decision making—biases toward parole or toward denying parole—develop until they become apparent to the board. When the board realizes it has been leaning in a certain direction or is accused of doing so, it may respond by swinging in the other direction.

Ultimately, we can only speculate about what has caused the fluctuation in the number of paroles granted annually because the board has no data that explains it. Hopefully, if the board implements the changes we suggest in Section III relative to electronic recordkeeping, it will be better able to explain fluctuations in the future.

Workload

As the number of inmates has increased, presumably so has the board’s workload. Surprisingly, however, the board has been keeping track of the numbers that would enable us to draw such a conclusion only since January 1999.⁶⁶ Since that time, the board has averaged 341 reviews a month, resulting in the yearly totals shown in Table A. Also shown in Table A is the number of parole and parole-violation hearings held. Inexplicably, the board’s workload does not appear to be increasing sharply, but with such little data available, it is difficult to detect any trends.⁶⁷

Table A: Parole Board Workload			
Fiscal Year	Reviews	Parole Hearings	Violation Hearings
1998-99	2014*	No data	No data
1999-00	3906	841	293
2000-01	4307	778	245
2001-02	4085	957	262

**Data only compiled from January-June 1999.
Source: Annual Report of the Nebraska Board of Parole FY2001-02. Table prepared by the Legislative Performance Audit Section.*

Revocations and Recidivism

Most parolees in Nebraska spend a very short time on parole. For those who successfully completed parole in FY2001-02, the average length of parole was 9.4 months. For those who had their parole revoked in FY2001-02, the average length of parole before revocation was 8.8 months. In general, parolees who violate do so rather quickly. Over 56 percent of the parolees who had their paroles revoked in FY2001-02 were on parole for six months or less, over 83 percent had their paroles revoked in a year or less.⁶⁸

Revocation and recidivism rates are important measures of parole success, but for different reasons. If a parolee successfully completes parole, it shows that parole was a good decision from an economic standpoint: If inmates complete their sentences on parole rather than in prison, it saves the state money, at least in the short term.⁶⁹ Indeed, parole appears to be cost effective more often than not. Each year, approximately two times as many parolees

⁶⁵ Conversation with Linda Krutz (chairperson of the board), Esther Casmer (vice chairperson), Robert Boozer (member), and Mike Gomez (member), 18 February 2003; conversation with Linda Krutz, 31 March 2003.

⁶⁶ This was a policy initiated by Linda Krutz, the board’s current chairperson.

⁶⁷ One explanation for the fact that prison populations are increasing, apparently without a corollary increase in the board’s workload, is related to the fact that the number of inmates with short sentences are accounting for the growth in

population figures. They drive the population up but, because of their sentence structures, there is insufficient time to be reviewed by the board.

⁶⁸ Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002.

⁶⁹ The average cost per inmate for parole is less than \$9 per day, while the average cost per inmate for incarceration is \$62 per day.

complete parole as have their paroles revoked.⁷⁰

The other way to measure the success of parole is to look at recidivism rates for parolees as compared to recidivism rates for inmates who are mandatorily discharged. This is a measure of whether parole serves a rehabilitative function. Recidivism is defined by the department as a new incarceration for a new crime that occurs within three years of release. The department has been measuring recidivism only since FY1993-94, and doing so in a sophisticated manner only since FY1996-97. Since then, parolee recidivism was 20 percent while recidivism for those who were mandatorily discharged was 22 percent. Thus, it appears parole is not terribly successful at rehabilitating offenders, at least when measured using the three-year period adopted by the department.

Criticisms of the Board: Fact and Fallacy

Thus far, we have described the board, the parole process, and some parole trends. In this subsection, we describe some common misperceptions about the board. Our purpose here is not to defend the board; rather to insist that criticism of the board be grounded in reality.

It appears that the board sometimes is used as a scapegoat for problems endemic in the criminal-justice system. Over the years, criticism has come at the board from different directions. As noted above, in the early 1990s, the board was taken to task by then-Governor Nelson for allegedly making risky decisions and releasing dangerous offenders. Today, the opposite criticism is heard (though, we should note, not from the Governor). The board has been accused of releasing too few inmates,

thereby contributing to prison overcrowding and the growing prison budget.⁷¹

Current critics of the board often point to the fact that the number of inmates who are mandatorily discharged far surpasses the number of parolees. These critics are aggravated that paroles have remained relatively steady despite increasing prison populations. However, as we have pointed out, this seeming anomaly may be caused by complex factors unrelated to the board: short sentences—often related to drug offenses—do not provide time for meaningful parole; drug-misconduct reports automatically postpone parole-eligibility dates; and refusals to comply with personalized plans prevent paroles.

Critics of the board also point to the large number of parole-eligible inmates who are not being paroled.⁷² However, there is again a danger in oversimplification. An analysis relevant to this discussion was done by the department in March 2003. Table B reflects that analysis, which separated the population of parole-eligible inmates into various nonoverlapping groups.⁷³

Of 1,521 inmates eligible to have a parole hearing, 379 had already had hearings scheduled. 682 of the remaining 1,142 inmates were less-than-ideal candidates for parole because they were either violent offenders (403), repeat offenders who have been incarcerated multiple times (211), or parole-violation risks (68). An additional 47 inmates were new ad-

⁷⁰ Nebraska Department of Correctional Services Annual Report and Statistical Summary, FY 2002.

⁷¹ See, e.g., the series of articles published by the Omaha World-Herald on 9 February and 10 February 2003 relative to rising prison populations and the parole board.

⁷² There was much discussion about this issue during the Legislative hearing on LB 455 (2003) before the Judiciary Committee, 14 February 2003. The board chairperson also told us on numerous occasions that she is often taken to task over the number of parole-eligible inmates.

⁷³ The groups were nonoverlapping in the sense that each inmate was placed in just one applicable group (the first one he or she fell into, based on the list order shown in Table B). Thus, if an inmate who was convicted of a violent crime had been set for a hearing, the inmate was counted as “set for a hearing” and not as a “violent offender.”

Table B Status of 1,521 Parole-Eligible Inmates 11 March 2003	
Number	Status
379	scheduled for hearing
403	violent offenders
159	have detainers or holds
85	on work release
211	multiple incarcerations
68	previous parole violations
47	newly admitted inmates
169	reviewed at least once

Source: Information provided by the Department of Correctional Services. Table prepared by the Legislative Performance Audit Section.

missions, who, although parole-eligible, had not been incarcerated long enough to be reviewed by the board.⁷⁴

Based on the foregoing figures, one could argue that only 413 of 1,521 eligible inmates *might have been* good risks for parole but were not scheduled for hearings. Unfortunately, the board's current recordkeeping system does not allow one to easily evaluate the board's reasons for failing to schedule parole hearings for these arguably good-risk inmates. Nevertheless, while the board is often criticized for allowing parole-eligible inmates to languish in prison, the population of inmates who are good risks may be much smaller than is usually perceived. The department's analysis, reflected in Table B, reveals that the board was not holding off parole decisions for a large number of inmates for no good reason.

Another criticism of the board is that its current composition is likely to result in a bias—or at least an appearance of bias—against inmates, presumably based on an assumption

⁷⁴ As noted earlier in this section, it takes several months for DEC to complete the processing that must be done before the board can conduct a parole review for a new inmate.

that individuals who have criminal-justice backgrounds hold conservative views.⁷⁵ On the other hand, one can argue, as board members do, that a background in criminal justice is helpful because it makes one familiar with criminal behavior and psychology.⁷⁶

Three of the board's five members were previously employed in the criminal-justice system;⁷⁷ however, LB 455 (2003) proposes limiting the number of people with criminal-justice backgrounds on the board to two. LB 455 would also require that at least one board member have a background in mental health or substance abuse treatment.⁷⁸ Whether or not the changes contemplated by LB 455 would make a difference in the board's decisions is an open question, but, if adopted, they might at least alleviate the suspicions of a certain group of board critics.

⁷⁵ For example, the Omaha World-Herald, in a 10 February 2003 article entitled *Parole Board Members Can Be Tough to Win Over*, quoted State Senator Ernie Chambers labeling the board "ultra-conservative" and stating that the chairperson "feels her job is to keep people locked up."

⁷⁶ Conversation with Linda Krutz, Esther Casmer, Robert Boozer, and Mike Gomez, 18 February 2003; conversation with James Pearson, 24 February 2003.

⁷⁷ The chairperson, Linda Krutz, was a probation officer in McCook for more than 22 years prior to her membership on the board; vice-chairperson Esther Casmer was a unit case manager for the department for 19 years; and James Pearson was with the State Patrol for 30 years. The remaining board members do not have backgrounds in criminal justice. Robert Boozer worked for U.S. West for 27 years, and Miguel (Mike) Gomez worked for the Department of Revenue for 34 years.

⁷⁸ Board members claim to have some of this training as part of their correctional backgrounds. Linda Krutz, testimony on LB 455 (2003) before the Judiciary Committee, 14 February 2003.

SECTION III

EFFICIENCY AND RECORDKEEPING

Thus far, we have described the parole process, discussed parole trends, and addressed some criticisms of the Nebraska Board of Parole (board). This section addresses the remaining questions posed in the scope statement: Can the parole process be made more efficient? And, to what extent does the board maintain records in a useful format? We address these questions below.

Management of the Board

The key efficiency issue we identified relates to the board's management structure, or lack thereof. Current board statutes, rules and regulations, and policies and procedures provide almost no guidance for the chairperson and other members of the board regarding the chair's authority and the scope of her administrative duties. In terms of day-to-day operations, the entire board relies heavily on the skills and institutional memory of one key staff member.

When an entity attempts to function with an ill-defined management structure, the deficiency is likely to manifest itself in varying degrees of inefficiency, personal conflict, and ineffective performance. In the case of the board, it appears to have contributed significantly to the board's failure to develop an efficient, up-to-date recordkeeping system (see the next subsection); tension among board members; and less-than-optimum interaction with the Department of Correctional Services (department). Without clear lines of authority, the board cannot function efficiently and effectively as an agency of state government.

For example, the director of the department told us that, over the years, he has been asked by board members (though no member of the current board) to communicate with them

individually when there were matters of board policy he needed to discuss.⁷⁹ He refuses to comply with such requests because he believes questions of board policy or functions are properly directed to the chairperson, who should then communicate with the other members. We agree that this is the most efficient way of doing business.

Appointed by the Governor, board members, including the chairperson, come and go, much like agency directors. However, the thing that allows other agencies to function unimpeded by the limited tenures of their directors, is a bureaucratic structure that ensures consistency of operation. The board has no such structure in place.

By statute, the chairperson is given the authority to supervise the administration and operation of the board.⁸⁰ However, the statutes and the board's rules and regulations go no further in defining the scope of this authority.⁸¹ The board's policies and procedures define a few specific duties of the chairperson,⁸² but do not address any substantive issues regarding her administrative authority. This lack of guidance has historically been interpreted by the board to mean that the chairperson has no authority over the other board members.⁸³ According to the chairper-

⁷⁹ Conversation with Harold Clarke, 19 March 2003. In a subsequent telephone conversation, Clarke reaffirmed that this is not a problem unique to the current board. Telephone conversation with Harold Clarke, 14 April 2003.

⁸⁰ Neb. Rev. Stat. sec. 83-192(2).

⁸¹ Rules and Regulations of the Nebraska Board of Parole, Ch. 3, sec. 006.

⁸² The board's policies and procedures give the chair the authority to orient new board members (Board Manual, A-2), designate a vice-chairperson (Board Manual, A-4), and represent the board by testifying at legislative hearings (Board Manual, A-9).

⁸³ Conversation with Linda Krutz, 31 March 2003; conversation with Trudy Clark, 31 March 2003; conversation with Harold Clarke, 19 March 2003.

son, she is occasionally uncomfortable questioning board members' time sheets or asking other board members to take on additional duties because her authority to demand compliance is unclear.⁸⁴

Due to the lack of organizational guidance set out in statute and regulation, the only operational consistency provided to the board over time is that provided by the ranking staff member—an Administrative Assistant II with 23 years of experience. The administrative assistant oversees the day-to-day agency operations and supervises the other staff members. (The board employs, in addition to the administrative assistant, four full-time and one part-time staff members.) She is also the board's primary repository of institutional memory. Her authority and value to the board far outweigh her position classification.

As part of a potential statutory cleanup proposed later in this section, we suggest that the Legislature may want to consider providing the board with a defined staff structure and clarifying the chairperson's management authority, particularly vis-à-vis the other board members.

Recordkeeping and the Need for a Database

To ensure that the board, the Legislature, and other policymakers have adequate data at their disposal when setting parole policy, electronic recordkeeping relative to parole must be dramatically improved. Currently, all parole records and data are kept on paper, primarily in inmates' institutional files. The department is statutorily required to include parole records, such as progress reports and review information, in the institutional files and to provide

the files to the board.⁸⁵ Additional records such as parole certificates and placement information are also placed in the files by the department's Office of Parole Administration.⁸⁶

This system is probably as efficient as a paper-and-file system is going to get: If the board or department needs information about a specific inmate or parolee, all the details can be found in the inmate's or parolee's file. The problem is that gathering summary information—aggregating data across a given population of inmates—is impossible. Gathering even a sample of such information is dauntingly labor intensive.⁸⁷

Nor does the department maintain a broadly useful electronic database of parole information. The department *does* maintain the minimum amount of electronic information necessary to keep the parole system running. The department's mainframe database, the Corrections Tracking System (CTS), contains only three fields of information *specifically* related to the parole function: the date of an inmate's last review, the action taken by the board (schedule another review or set a parole hearing date), and the date of the next review or hearing (for scheduling purposes). The CTS is simply not set up to provide any detail about the board's activities or decisions.

Additional summary information, maintained by the board—such as the number of hearings, paroles, and revocations—is minimal and, again, is kept only on paper. While summary information is certainly necessary, it

⁸⁴ Conversation with Linda Krutz, 31 March 2003. The extent to which board member time sheets *can* be questioned is unclear. Like agency heads, board members are “neither fish nor fowl” in terms of their employment status. They are salaried employees (the salaries are set by the Governor), but they are expected to turn in time sheets.

⁸⁵ Under Neb. Rev. Stat. sec. 83-197, the board is authorized to direct the department to keep records concerning inmates which the board deems pertinent to its functions.

⁸⁶ Under Neb. Rev. Stat. sec. 83-1,100(2), the Office of Parole Administration is charged with maintaining all records and files associated with the board.

⁸⁷ We looked at five percent of the department's inmate records—a sample of just of 200 files—to see how often the board agreed with the department's parole recommendations. It took us 40 manhours to gather the few bits of necessary information from each file.

does not fill the bill as a tool for policy analysis. As discussed in Section II, because of the absence of manipulatable data, one can only speculate about the reasons for parole-related trends. Furthermore, the summary information maintained by the board has been maintained only for the past three years.

All of this takes on more meaning in light of the fact that the chairperson is statutorily required to conduct research to improve the parole system.⁸⁸ Doing this is virtually impossible given the current nature of the board's record-keeping system.

Complicating matters, when the department and the board keep overlapping records, they often do not agree. For example, for the three years in which there has been redundant recordkeeping, the department and the board do not agree on the exact number of inmates paroled in any given year—a number that is clearly not subject to interpretation or manipulation. From an auditing perspective, it is an extremely frustrating situation.

The board and the department are frustrated as well, but nothing has been done to correct it. The department put together a “task force” two years ago to look at the issue of cross-agency recordkeeping, but the group disbanded because of budget cuts.⁸⁹ Such a group should be recreated for the purpose of developing a parole database, to be maintained by the board or the department, that would provide parole information in a format that would be useful to researchers.

Database-Implementation Issues

On the basis of our limited experience with the board, we cannot lay out exactly what the content of a parole database should be, nor can we say for certain whether it should be

maintained by the board or by the department (in the latter case, presumably as part of the CTS). However, we offer the following thoughts.

With regard to where the database should be “located,” the fundamental issue is ease and speed of implementation. Our perception is that, because the CTS is a mainframe system, and therefore expensive and time-consuming to modify, the board might be better off developing a database using commercially available software. The costs of such an undertaking are discussed below.

With regard to the content of the database, careful thought should be given to it. It seems to us that, at a minimum, the board should be able to report:

- any and all information that is now maintained on paper (the number of inmates paroled; the number of reviews, hearings, and violation hearings held; etc.);
- why inmates were or were not scheduled for hearings or paroled;
- inmates' parole histories (the number and frequency of reviews, recommendations, etc.);
- the number of inmates deferred to mandatory discharge and why;
- the department's recommendations (for comparison to the board's decisions); and
- the board's programming recommendations.

And it should be able to report the foregoing information in complete agreement with the department.⁹⁰

Whether the board maintains the parole database itself or the department incorporates it into the CTS, it should not take long to see

⁸⁸ Neb. Rev. Stat. sec. 83-192(2)(d).

⁸⁹ Conversation with Trudy Clark, 17 December 2002 and 31 March 2003.

⁹⁰ This is not to say that the board has to conform its data to that reported by the department; the reverse might be true. The point is that discrepancies in records should be corrected to reflect accurate information.

results in terms of reports that are useful for policy research. After the database is developed, it will take only a year to nearly fully populate it (because the board sees almost every inmate at least once a year).

Database-Implementation Costs

There would be costs associated with setting up a database separate from the department's, but they would not necessarily be prohibitive. The board's staff members have the full Microsoft Office suite on their personal computers. Microsoft Access—a database application—is part of the suite, and could be used by the board without necessitating the purchase of additional software. Thus, costs would be associated with setup and training, not capital outlay. A consultant would be needed to set up the database and create entry forms and reports, and staff would need to be trained.⁹¹

In terms of efficiency, if the board decides to maintain a database separate from the department, some duplicative data entry would occur. However, there is so little parole information included in the CTS that this is not a significant concern. Gains in recordkeeping and reporting efficiency would more than offset duplicative data entry costs.

Accepting these costs and creating a database is the only way to go about making available the data needed to do the types of analyses the parole system and state government as a whole should have access to. We are confident that, once the transition period was over, and the board and its staff had become familiar with the database, they would find many uses for the information.

⁹¹ In calculating the costs of establishing and beginning to use a database, it should also be remembered that some loss of time and effort inevitably occurs when a new system is put in place.

Documentation

The board should modify and improve the form on which staff members take notes during reviews—the so-called “blue sheet.”⁹² Modification of the blue sheet will be especially important if the board implements a parole database as we suggest. For example, the blue sheet could be used to record the department's recommendations and whether they were followed. We looked at this information in a sample of files, and it was difficult to gather because the recommendations and the action taken are in different places in the file. The recommendations could be easily recorded on a blue sheet and, more importantly, tracked electronically. The full extent of the modification required will not be clear until the content of the database is determined.

Another improvement relative to the blue sheet would be for staff members to get into the habit of using the full date (month, day, and year) whenever a date is recorded. When reviewing files, we often had to take time to reconstruct the sequence of events to determine the year of the hearing because only the month and day were recorded. This represented unnecessary effort, and the problem could be remedied with a simple change. We strongly urge the board's staff members to be mindful of such details.

Statutory Cleanup

We found that the board complies with statutory requirements relative to the parole process, but the statutes themselves are often confusing. For example, there are places in the statutes that do not draw clear distinctions between parole reviews and parole hearings.⁹³

⁹² Extensive notes are not taken during parole and violation hearings. A blue sheet is reproduced in Appendix A.

⁹³ Most notably, Neb. Rev. Stat. secs. 83-1,111 and 83-1,114 blend discussions of parole reviews and parole hearings together to the extent that it is unclear which requirements apply to which type of hearing. Legislative bill 46 (2003) addresses one of the more serious mix-ups in section 83-

The parole process is complicated enough without statutes that add to the confusion.

An additional statutory improvement would be to delete section 83-192(e), which requires the board to develop objective risk-assessment criteria to use as “additional considerations” in its decision making.⁹⁴ The board developed the criteria and produces a risk assessment for each inmate, but we were told that it is not useful.⁹⁵ In fact, the assessment is almost never used by the board in making its parole decisions, is now outdated, and is time consuming to produce.⁹⁶ We suggest removing the requirement from statute, or, if the Legislature wants the board to take the requirement more seriously, modifying it to make it useful.

1,111(4), but we are of the opinion that a broader statutory cleanup is still in order.

⁹⁴ Neb. Rev. Stat. sec. 83-192(e).

⁹⁵ Conversation with Trudy Clark, 31 March 2003.

⁹⁶ *Id.* The assessment tool has not undergone a revision (a “revalidation”) since it was created almost ten years ago. Furthermore, there is a full-time position dedicated to producing assessments that could be redirected to more productive activity.

Appendix A

STATE OF NEBRASKA
BOARD OF PAROLE
P.O. Box 94754 • Lincoln, Ne 68509 • (402) 471-2156



OFFENDER BOARD REVIEW NOTICE

DATE: February 11, 2003

NAME:

NO.

LOCATION:

EARLIEST PAROLE ELIGIBILITY DATE:

In compliance with Neb. Rev. Stat. 83-1,111, 83-192 and 83-1,114, the Nebraska Board of Parole reviewed your case on _____ in your _____. As a result of this review, the Board of Parole has deferred your case to a _____ Board Review for the following reasons indicated with an [X]:

- [] Because of your past violations of parole and/or probation, there is substantial risk that you will not conform to the conditions of parole.
- [] The nature/circumstances of the offense(s) indicates that an early release would depreciate from the seriousness of your crime and promote disrespect for the law.
- [] Due to your prior criminal record.
- [] Because of your negative attitude and actions toward rules, regulations, and authority, your early release would have a substantially adverse effect on institutional discipline.
- [] Your continued correctional treatment, medical care, or vocational training, or other training in the facility will substantially enhance your capacity to lead a law-abiding life when released at a later date.
- [] Not eligible for parole at the present time/due to sentence structure.
- [] Initial Board Review schedule and tentative release date do not allow adequate time for parole.
- [] Not available—waived/out to court/out on bond/escape/transferred/refused to appear.
- [] Inasmuch as a Classification study/Progress Report was unavailable for review or study, the Board of Parole has no alternative but to defer your case as indicated above.
- [] The Board of Parole is required by law to review your case within 60 days prior to your earliest parole eligibility date/in accordance with State Statute 83-192.
- [] At subject's own request.
- [] Recent misconduct reports.
- [] Lack of institutional support.
- [] No recommendations submitted by institution.

RECOMMENDATIONS (if any):

NEBRASKA BOARD OF PAROLE

xc: Records Office

**COPY OF THE LETTER
SENT TO AN INMATE
WHEN THE BOARD
HAS DEFERRED TO
ANOTHER REVIEW**

STATE OF NEBRASKA
BOARD OF PAROLE

P.O. Box 94754 • Lincoln, Ne 68509 • (402) 471-2156



OFFENDER BOARD REVIEW NOTICE

February 11, 2003

NAME: _____ **NO.** _____ **LOCATION:** _____
EARLIEST PAROLE ELIGIBILITY DATE: _____

In compliance with Neb. Rev. Stat. 83-1,111, 83-192 and 83-1,114, the Nebraska Board of Parole reviewed your case on _____ in your presence. As a result of this review, the Board has set your case for a _____ Final Parole hearing.

The Board of Parole will require that you maintain a good institutional record free of any misconduct or poor progress reports in order to enhance and justify favorable actions. If released on parole, the Board will require as a condition of parole that you refrain from engaging in criminal conduct and conform to the following conditions of parole as set forth in the parole agreement:

- ◆ Meet your family responsibilities.
- ◆ Maintain an approved employment/education and residence program and notify your Parole Officer prior to any changes.
- ◆ Remain in the geographic limits fixed in your certificate of parole unless granted written permission to leave.
- ◆ Report as directed to your District Parole Officer.
- ◆ Refrain from associating with persons known to you to be engaged in criminal activities.
- ◆ Satisfy all other conditions of parole.
- ◆ Satisfy any special conditions of your parole agreement.

RECOMMENDATIONS (if any):

**LINDA KRUTZ, CHAIR
NEBRASKA BOARD OF PAROLE**

xc: Records Office

**COPY OF THE LETTER
SENT TO AN INMATE
WHEN THE BOARD SETS
A PAROLE HEARING**

BOARD OF PAROLE WORKSHEET

 LCC D&E NSP RTC OCC NCCW CCL CCO LRC NCYF TSCI

DATE OF REVIEW _____ **ABSENT** _____

NAME _____ NO. _____

PED _____ PTRD _____ TRD _____

Defer to _____ Review

Defer til Available or _____ Review

Defer to **Mandatory Discharge/Parole** (tentatively _____)

****SET YOUR CASE FOR A _____ HEARING****

- A. _____ Because of your past violations of parole and/or probation.....
- B. _____ The nature/circumstances of the offense(s) indicates that an early release.....
- C. _____ Due to your prior criminal record.
- D. _____ Because of your negative attitude and actions toward rules, regulations, and authority.....
- E. _____ Your continued correctional treatment..... (If "E" then there must be recommendations)
- F. _____ Not eligible for parole at present/due to sentence structure.
- G. _____ Initial Board Review schedule and TRD do not allow adequate time for parole.
- H. _____ Not available – waived/out to court/out on bond/escape/transferred/refused to appear.
- I. _____ The Board of Parole is required by law to review your case within 60 days/in accord. w/SS 83-192....
- J. _____ Inasmuch as a Classification Study/PPR was unavailable.....
- K. _____ At subject's request.
- L. _____ Recent disciplinary reports.
- M. _____ Lack of institutional support.
- N. _____ No recommendations submitted by institution.
- O. _____ Refuses programming/parole.

RECOMMENDATIONS - (If "E" then there must be recommendations)

Participate/Continue in Substance Abuse Program (_____) AA/ NA (weekly) GOLF (_____)

Participate/Continue Mental Health (_____) Anger Management Cognitive Thinking/Self-Change

Participate/Continue (In-patient) Sex Offender Program (_____) ESL Classes Parenting Classes

Work Release/ Community Custody/ RTC/SAU Incur no misconduct reports Work on GED

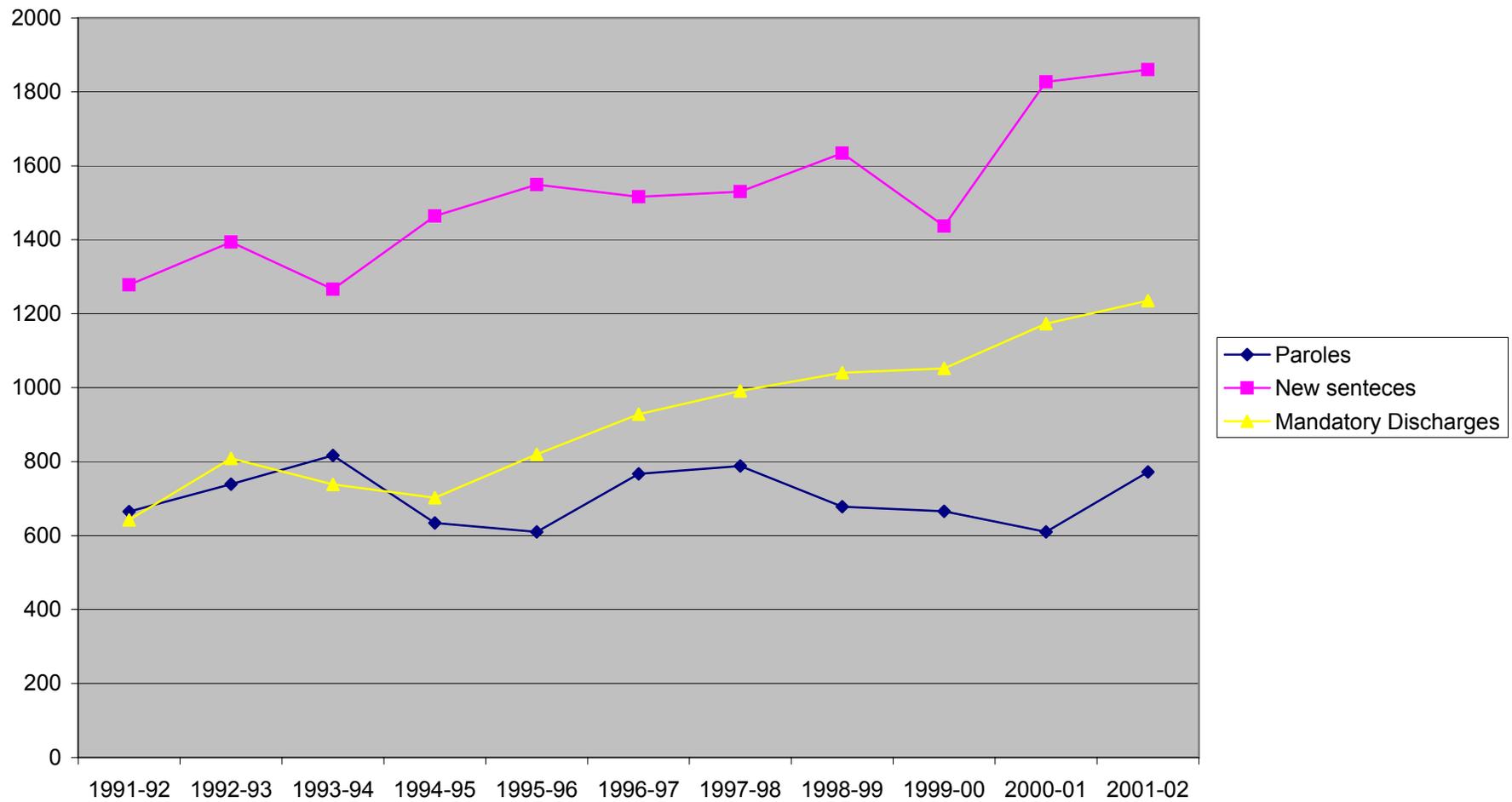
Submit to psychological evaluation Continue/successful completion of SAU/RTC Follow staff's advice

- _____ B. BOOZER
- _____ E. CASMER
- _____ M. GOMEZ
- _____ L. KRUTZ
- _____ J. PEARSON



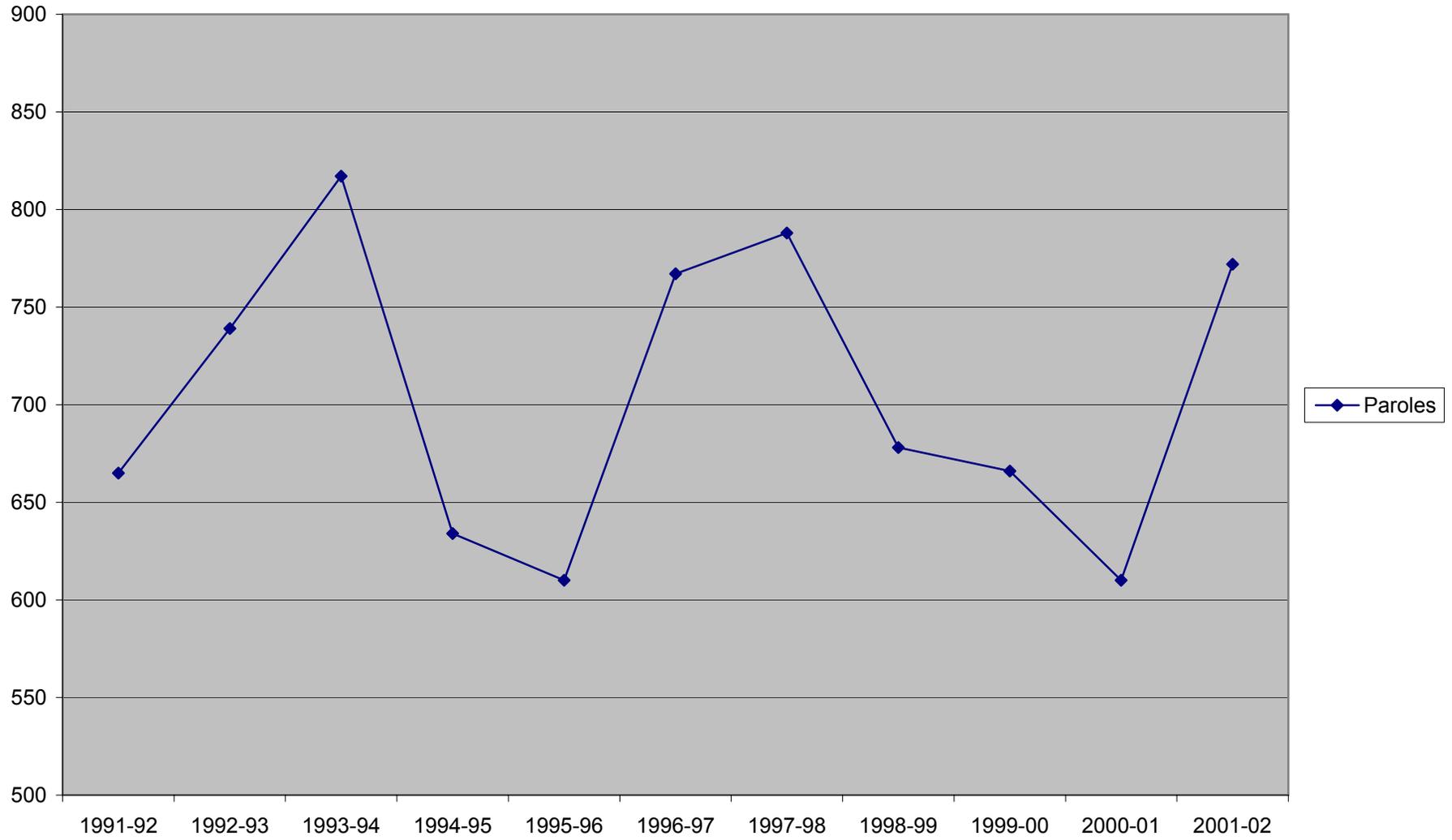
Appendix B

Appendix B: Number of Paroles, New Sentences, and Mandatory Discharges FY1991-92 to FY2001-02



Appendix C

Appendix C: Number of Paroles FY1991-92 to FY2001-02



Part III

*Committee Findings and Recommendations
and
Fiscal Analyst's Opinion*

LEGISLATIVE PERFORMANCE AUDIT COMMITTEE RECOMMENDATIONS

Nebraska Board of Parole

On 12 August 2003, in accordance with Neb. Rev. Stat. sec. 50-1211(1) of the Legislative Performance Audit Act, the Legislative Performance Audit Committee convened to consider the findings and recommendations contained in the Performance Audit Section's draft report entitled *Nebraska Board of Parole* and the board's response to the draft report. The committee adopted the following recommendations.

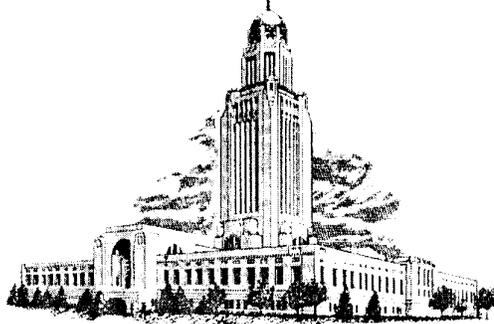
Findings		Recommendations
1	In our observations of the Nebraska Board of Parole (board) and the parole process, we did not identify any significant inefficiencies in such things as scheduling hearings and meeting with inmates.	No recommendation.
2	The board lacks the clearly-delineated management and staffing structure necessary to the efficient and effective functioning of an agency of state government.	The statutes creating the board and the corresponding regulations should set out a more clearly-delineated management and staffing structure for the board than currently exists. In particular, the terms and conditions of employment for board members, as well as the authority of the chairperson vis-à-vis the day-to-day operations of the office and other board members should be clearly spelled out.
3	Electronic recordkeeping relative to parole needs to be dramatically improved; neither the Nebraska Department of Correctional Services (department) nor the board maintains a <i>useful</i> electronic database of parole information. The data maintained by the board is minimal and it is kept in a format (paper) that is not effective or efficient in terms of storing or giving access to information.	The board, either in conjunction with the department or by itself, should set up a parole database that would enable it to store and report detailed parole information efficiently and effectively.

Findings		Recommendations
4	Documentation by the board's staff members should to be improved, especially if the board implements a parole database as recommended above.	The board should modify its "blue sheet" to make it an adequate tool for recording information. If a database is created, the newly designed form should conform to the requirements of that database. Also, the board's staff members should always record full dates (specifically including the year) on all parole records.
5	Portions of the board's statutes need revision, either because they are confusing or contain unnecessary requirements.	The Legislature should revise the board's statutes to provide clarity and remove unnecessary requirements.

State of Nebraska

LEGISLATIVE COUNCIL

2003
EXECUTIVE BOARD
LEO "PAT" ENGEL, Chairman
JIM CUDABACK
CHRIS BEUTLER
RAY JANSSEN
ERNIE CHAMBERS
NANCY THOMPSON
JIM JONES
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GENE TYSON
ROGER R. WEHRBEIN (ex officio)



PATRICK J. O'DONNELL
Clerk of the Legislature

CYNTHIA G. JOHNSON
Director of Research

JOANNE PEPPERL
Revisor of Statutes

MICHAEL CALVERT
Legislative Fiscal Analyst

MARSHALL LUX
Ombudsman

Legislative Fiscal Office
PO Box 94604, State Capitol
Lincoln, NE 68509-4604

August 18, 2003

RECEIVED

AUG 19 2003

LEGISLATIVE RESEARCH

Cynthia Johnson, Director
Legislative Research
Room 1201, State Capitol
Lincoln, NE 68509

Dear Cynthia:

The Legislative Fiscal Office has reviewed the final committee report for the Nebraska Board of Parole evaluation. It is the estimate of the Legislative Fiscal Office the recommendations for statutory language clarifying the Parole Board's role and for delineating the management and staffing structure can be carried out using the existing budgetary and staffing resources of the Nebraska Parole Board.

The recommendation for the development of a database for policy makers to assess the Parole Boards performance is partially addressed in the Community Corrections Act. The act passed in 2003 with the passage of LB 46 which in part, provides for a "uniform crime data analysis system" in Nebraska. The executive director of the Nebraska Crime Commission is charged with developing and maintaining a uniform system for the analysis of crime data to include data on parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. Further, the bill provides for the collection of a one-dollar uniform data analysis fee on filings in state courts. The fees collected will be deposited in a Community Corrections Uniform Data Analysis Fund, to be used solely for the creation and maintenance of the crime data system. There may be some additional costs to the Parole Board for collecting and transmitting information to the Nebraska Crime Commission but until the system is developed, the fiscal impact is not determinable.

If you have any questions, please contact me or Mike Calvert, Director of the Legislative Fiscal Office.

Sincerely,

Howard Kensinger
Legislative Analyst

08180200 HK.doc

cc: Mike Calvert

Part IV

Background Materials

BACKGROUND MATERIALS

The “background materials” provided here are materials (in addition to the section’s report) that were available to the committee when it issued the findings and recommendations contained in Part III of this report. They include: 1) the board’s response to a draft of the section’s report (the draft findings and recommendations are also provided for context), and 2) the section director’s summary of the board’s response.

SECTION DRAFT FINDINGS & RECOMMENDATIONS

The scope statement adopted by the committee instructed the section to:

- describe and analyze the parole process to determine if, and identify ways in which, it could be made more efficient;
- analyze the extent to which the board maintains records in a format that allows it to easily report its performance to the Legislature and other policy-makers; and

- to the extent allowed by the board's recordkeeping, analyze parole trends over the past decade with an eye toward the causes and effects of such trends.

The section's findings and recommendations are contained in the following table.

Findings		Recommendations
1	In our observations of the Nebraska Board of Parole (board) and the parole process, we did not identify any significant inefficiencies in the process itself.	No recommendation.
2	The board lacks the clearly-delineated management and staffing structure necessary to the efficient and effective functioning of an agency of state government.	The statutes creating the board and the corresponding regulations should set out a more clearly-delineated management and staffing structure for the board than currently exists. In particular, the terms and conditions of employment for board members, as well as the authority of the chairperson vis-à-vis the day-to-day operations of the office and other board members should be clearly spelled out.
3	Electronic recordkeeping relative to parole needs to be dramatically improved; neither the Nebraska Department of Correctional Services (department) nor the board maintains a <i>useful</i> electronic database of parole information. The data maintained by the board is minimal and it is kept in a format (paper) that is not effective or efficient in terms of storing or giving access to information.	The board, either in conjunction with the department or by itself, should set up a parole database that would enable it to store and report detailed parole information efficiently and effectively.

Findings		Recommendations
4	Documentation by the board's staff members should to be improved, especially if the board implements a parole database as recommended above.	The board should modify its "blue sheet" to make it an adequate tool for recording information. If a database is created, the newly designed form should conform to the requirements of that database. Also, the board's staff members should always record full dates (specifically including the year) on all parole records.
5	Portions of the board's statutes need revision, either because they are confusing or contain unnecessary requirements.	The Legislature should revise the board's statutes to provide clarity and remove unnecessary requirements.

STATE OF NEBRASKA

NEBRASKA BOARD OF PAROLE

P.O. Box 94754
Lincoln, NE 68509-4754
Phone (402) 471-2156
Fax (402) 471-2453



Mike Johanns
Governor

May 15, 2003

RECEIVED
MAY 15 2003
LEGISLATIVE RESEARCH

Program Evaluation Unit
Legislative Research Division
Nebraska Legislature
Room 1201, State Capitol
Lincoln, NE 68509

The Board is in receipt of your final draft report. Each member and the Administrative Assistant were provided with a copy of the report to review. The Board met on May 2, 2003 to discuss the preparation of a response to the draft report.

Although you indicated in your cover letter that you are requesting responses to the Unit's recommendations, the Board expressed minor concerns with the body of the report. Most of these concerns relate to the need for clarification or additional information. There is only one (1) instance where the Board Members disagree completely with the data provided. We are going to address each topic of concern individually as follows:

On page three (3), second paragraph, the Board would like it noted that the one part-time support staff serves the Board of Pardons part-time and the Board of Parole part-time equaling one (1) full-time position.

On page eight (8), second paragraph under "Parole and Mandatory Discharge", the Board noted the information regarding mandatory discharges was very general. It may be helpful to include that during calendar year 2002, 431 inmates waived their Offender Board Reviews and were subsequently mandatorily discharged, 29 inmates waived their Parole Hearing and were mandatorily discharged, and approximately 80 inmates were identified as having sentence structures (parole eligibility & tentative release dates were the same) excluding the opportunity for parole.

Page Two
May 15, 2003

On page nine (9), fourth paragraph, the Board feels that the data contributed by the Department of Corrections regarding the increase in parole numbers should not be included in the report. The Board does; however, concur that there is an upward trend on paroles at the current time.

The Board does not necessarily feel they have liberalized their stance or softened their approach, but rather have been forced to make adjustments in its programming expectations due to inadequate programming availability within the department. Additionally, the Board has chosen to be flexible in considerations for parole when inmates receive tobacco-related misconduct reports.

On page ten (10), first paragraph under "Workload", the Board concurs that the workload has not increased dramatically regarding Parole Hearings and Violation Hearings, but the Board does feel that there has been a dramatic workload increase in the review process. Table A on page ten (10) reflects that the number of Board Reviews being conducted has more than doubled in four (4) years.

On page 12, Board Members Casmer, Pearson, Boozer and Gomez would like the following information regarding their employment qualifications included in footnote 73:

- Esther Casmer held various management assignments within her 19 years of employment with the Nebraska Department of Corrections, concluding her career with that agency as a Case Manager, which includes experience as a Unit Manager.
- James Pearson was employed in various assignments for 30 years with the Nebraska State Patrol, of which 21 years were in management positions, concluding his career as the Assistant Superintendent of that law enforcement agency.
- Robert (Bob) Boozer was employed for 27 years in management with a fortune "500" telecommunications company, concluding his career with the firm as the Director of Legislative/Community Affairs.
- Miguel (Mike) Gomez was employed by the State of Nebraska for 34 years in various management responsibilities within the Department of Revenue.

On page 13, third paragraph under "Management of the Board", Board Members Casmer, Pearson, Boozer, and Gomez deny that they have ever made the request to Director Clarke that he communicate directly with them instead of the Chairperson regarding matters of Board policy or functions.

On page 14, first full paragraph under "Management of the Board", the Board feels that the duties of the Administrative Assistant are that she oversees the day-to-day operations of agency business. Additionally, she supervises support staff. We want to reiterate that the one (1) part-time support staff employed by the Board of Parole also serves part-time for the Board of Pardons.

On page 14, second paragraph under "Management of the Board", Board Members Casmer, Pearson, Boozer, and Gomez disagree that changes should be made to statutes regarding the clarification of the Chairperson's management authority, particularly vis-à-vis the other Board Members. The aforementioned Board Members want statutes researched regarding the intent of the law regarding the Chairperson's responsibilities. This is because each individual Board Member, after his/her appointment by the Governor, is required to testify on their own behalf before the Judiciary Committee, and must be confirmed individually by that committee, and finally with a majority vote from the entire Legislature. Each appointee has historically possessed a sound work ethic, the ability to manage and govern their individual time, and maintain pride in their individual job performance.

Also on page 14, last paragraph under "Management of the Board", Board Members would like clarification regarding the suggestion that there needs to be more defined staff structure.

On page 17, the final paragraph of the draft report, Board Members Casmer, Pearson, Boozer, and Gomez feel that the criminal history assessment is useful and Section 83-192 (e) should not be deleted from State Statutes.

FINDINGS AND RECOMMENDATIONS:

- #2: As indicated, Board Members Casmer, Boozer, Pearson, and Gomez disagree with this recommendation. Reasons are previously stated in the body of this response.
- #3: The Board agrees that an electronic record keeping system is needed to aggregate statistical data regarding parole decisions.

- #4: The Board agrees that the "blue sheet" could be a helpful tool and is not opposed to implementing modifications. It is our belief that the issue regarding record keeping was unique to one (1) staff person and has been resolved. The staff will continue to strive to keep accurate and detailed records.

- #5: The Board agrees that there is some statutory language that needs clarification, and is also willing to work with the legislature to eliminate unnecessary provisions.

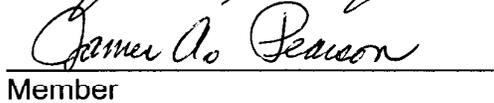
In closing, the Board recognizes and appreciates the diligent efforts of the Program Evaluation Unit in completing this report. The Board is always pleased to have the opportunity to share information regarding the parole process in hopes of enhancing the public's general knowledge of this agency's duties and responsibilities.



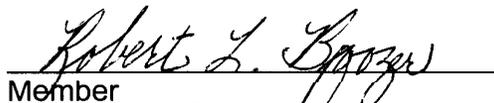
Chairperson



Vice Chair



Member



Member



Member

DIRECTOR'S SUMMARY OF AGENCY RESPONSE

On 15 May 2003, the Nebraska Board of Parole submitted a response to a draft of the Performance Audit Section's report prepared in conjunction with this audit. Neb. Rev. Stat. sec. 50-1210 requires the Section Director to "prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations." The director's summary of the response follows.

The board provided comments about the content of the report as well as the recommendations. We respond to each of its comments below.

- Comments relative to page three, second paragraph: We will add a footnote to clarify that the board's part-time staff member also serves the Board of Pardons part-time, equaling one full-time position.
- Comments relative to page eight, second paragraph: We will add text and footnotes, as needed, to provide more information about the causes of the increase in the number of inmates who mandatorily discharge. We will note the impact of inmates who waive their reviews or hearings and provide more detail about the effect of sentence structures.
- Comments relative to page nine, fourth paragraph: We disagree with the board's objection to including information relative to the Department of Correctional Services' drug-enforcement efforts as one possible reason for the recent increase in paroles. According to the department, and as reported in a Lincoln Journal Star article dated 8 March 2003, random drug tests have revealed less drug use in prisons over the past two years. (We will add a footnote citing this source.) It is logical that less drug use in prison means fewer drug misconduct reports for inmates, who are then better candidates for parole. We did not suggest in the report, and do not suggest here, that this is the only cause of the recent increase in the number of paroles, but it is likely a contributing factor.

The board also took issue with our use of the word "liberalized" in the fifth paragraph on that page. Nevertheless, the board acknowledges that it *has* made a conscious effort to increase paroles. Because the board appears to be reacting to the word itself rather than the idea, we will remove the word "liberalized" and use a word or phrase with a less political connotation.

- Comments relative to page ten, first paragraph: We disagree with the board's characterization of its workload. As noted below the table, the number of reviews conducted in FY1998-99 was based on only six months' worth of data. Thus, the table does not show that the board's workload has doubled in four years. It shows that the workload has been quite steady at about 4000 reviews *per full year*.
- Comments relative to page 12, footnote 73: The board, with the exception of the chairperson, wants us to add information to the footnote relative to the management experience of members. But that was not the purpose of the footnote; the purpose of the footnote was to indicate the board members' experience in the criminal justice system. We will, however, note that Robert

Boozer was employed for 27 years with U.S. West. We indicted neither his tenure nor employer in the footnote, as we did with the other members.

- Comments relative to page 13, third paragraph: We will add text to clarify that no member of the *current* board has made such a request.
- Comments relative to page 14, first paragraph: We will add text to clarify that the Administrative Assistant oversees the day-to-day *agency operations*, not the board.
- Comments relative to page 14, second paragraph: Given that this comment by the board is made without the chairperson's support (as are three others) and based on comments made to us by board members during a meeting that occurred after the draft report was completed, it is apparent that there is tension between the board's chairperson and its other members relative to management issues. We disagree that changes to the statutes are unnecessary. The statutes are not clear about the chairperson's responsibilities, especially vis-à-vis the other members, and we believe that should be addressed. Whether the chairperson has management authority over the other members, or whether all members are equal and responsible only for themselves, are questions whose answers should be clearly set forth by the Legislature.
- Comments relative to page 14, last paragraph: Our reference to the staff structure relates directly to the board's lack of bureaucratic structure. There is no system in place to ensure consistency of operation, and we believe there should be. All of the board's eggs are in a basket held by a person classified as an Administrative Assistant—perhaps the board needs someone, or needs to reclassify someone, to serve as an executive director or manager.
- Comments relative to page 17, last paragraph: The board's opinion on this matter is contrary to what we were told by staff. But regardless of whose perceptions are more accurate, whether the criminal-history assessment is still worth the cost of its production is an issue for the Legislature, since it was the Legislature that mandated its use in the first place.
- Comments relative to the recommendations: The only recommendation that the board took issue with was Recommendation #2, which is related to the board's management and staffing structure. As discussed above, with the exception of the chairperson, the board does not believe change is necessary. We disagree. The Legislature should address the board's management and staffing structure to ensure that the board operates effectively, efficiently, and consistently, now and into the future.

Addendum

STATE OF NEBRASKA

BRASKA BOARD OF PAROLE

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Mike Johanns
Governor

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SEP - 3 2003
LEGISLATIVE RESEARCH

August 29, 2003

Program Evaluation Unit
Legislative Research Division
Nebraska Legislature
Room 1201, State Capitol
Lincoln, NE 68509

The Board of Parole (the "Board") has received and reviewed the Legislative Performance Audit Committee Recommendations in its final form. The Board met on August 29, 2003, and respectfully submits the following response pursuant to Neb. Rev. Stat. section 50-1210:

Finding #1 - The Board appreciates and agrees with the finding that the parole process does not contain any significant inefficiencies.

Finding #2 – The Board welcomes the opportunity for dialog on the matter of Board and staff management. The Board is also willing to review and respond favorably to any proposed legislation that will improve on the parole process for the benefit of all Nebraskans. However, the Board respectfully disagrees that statutory revisions are necessary to clearly delineate management and staffing structure above and beyond the existing provisions of Neb. Rev. Stat. §§ 83-188 et seq. Section 83-192(2) provides in pertinent part as follows:

The chairperson of the board shall:

- (a) Supervise the administration and operation of the board;
- ...
- (f) Adopt and promulgate rules and regulations for the administration and operation of the board; and
- (g) Exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

The Board feels that the above enabling provisions are intentionally broad for a constitutional agency, created by Article IV, Section 13 of the Nebraska

Constitution, in order to avoid legislated management that could potentially interfere with the objective autonomy of the appointed Board members and ultimately disrupt the free-flow of deliberation in the Board's discretionary, decision-making process.

Finding #3 – The Board has implemented the recommendation to set up a parole database in conjunction with the Department of Corrections and the Board will continue to refine the database parameters in order to report detailed parole information.

Finding #4 – The Board has implemented the recommendation to modify its "blue sheet" as a data entry resource and staff members have been advised to record full dates on all data entries requiring an effective date.

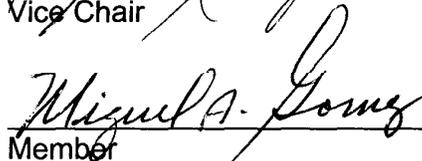
Finding #5 – The Board is in agreement that all statutory provisions that pertain to the Board should be clearly written and void of superfluous language.

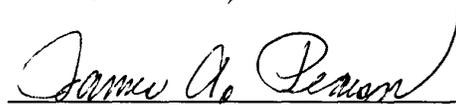
The Board thanks the Legislative Program Evaluation Unit for its hard work and its diligent investigation, review, and candid discussion of important Parole issues.

Respectfully submitted,


Chairman


Vice Chair


Member


Member


Member