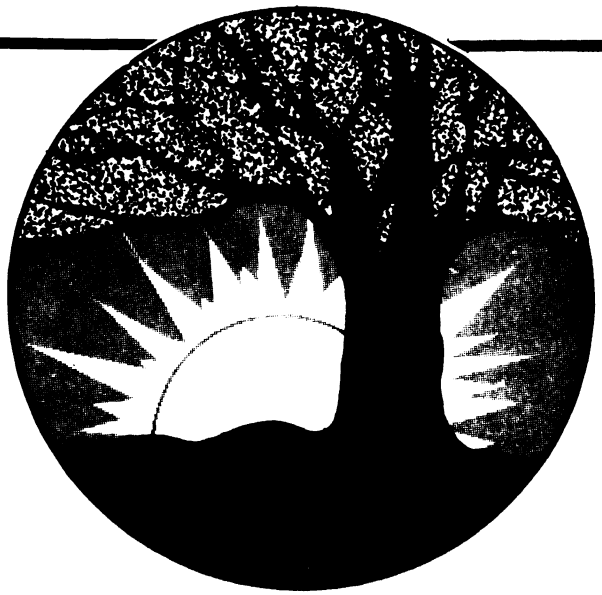
PERFORMANCE AUDIT

Board of Parole
Follow-up Report
March 2014



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March 20, 2014

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Judd Matheny, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Richard Montgomery, Chairman
Mr. David Liner, Executive Director
Board of Parole
404 James Robertson Parkway, Suite 1300
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the follow-up performance audit of the Board of Parole. This audit was conducted pursuant to the requirements of Section 3, Chapter 86, Public Acts of 2013.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the board should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless

Deborah V. Loveless, CPA
Director

14024

State of Tennessee

Audit Highlights

Comptroller of the Treasury | Division of State Audit

Performance Audit
Board of Parole
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AUDIT OBJECTIVES

The specific objectives of this audit of the Board of Parole were to determine the extent to which the board has implemented applicable recommendations from the eight findings in the September 2012 performance audit of the Board of Probation and Parole.

SUMMARY OF FOLLOW-UP FIELDWORK RESULTS

Our follow-up review found that the Board of Parole has made some improvements to address the three findings applicable to the board in the September 2012 performance audit.

The General Assembly transferred the supervision of felony offenders on probation and parole, as well as the administration of the community correction grant program, to the Tennessee Department of Correction on July 1, 2012, with full implementation required by January 1, 2013. The remaining five findings in the September 2012 report pertain to those programs and will be discussed in the separate report of the follow-up audit of the Department of Correction.

Performance Audit
Board of Parole
Follow-up Report

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Performance Audit
Board of Parole
Follow-up Report

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE FOLLOW-UP AUDIT

This follow-up audit of the Board of Parole was conducted pursuant to Section 3, Chapter 86 of the Public Acts of 2013, which requires the Comptroller of the Treasury's Division of State Audit to conduct a limited audit to review actions taken to address the issues raised in the findings of the September 2012 performance audit report of the Board of Probation and Parole. The Division of State Audit is required to complete the limited audit within a period sufficient to allow for review by the Government Operations Joint Subcommittee on Judiciary and Government no later than December 1, 2014.

OBJECTIVES OF THE FOLLOW-UP AUDIT

The objectives of the audit are to review actions taken to address issues raised in the September 2012 performance audit of the Board of Probation and Parole. The three audit findings applicable to the current Board of Parole include the following:

1. The board's disaster recovery plan lacks the elements necessary to ensure resumption of functioning and performing essential duties in the event of an emergency.
2. The board should reevaluate current procedures for posting meeting notices, to better ensure compliance with public meetings law.
3. In some instances, the board still fails to comply with state law regarding hearing decisions; furthermore, decision letters denying parole omit appeal rights.

The remaining five audit findings in the September 2012 performance audit will be addressed during the follow-up audit of the Tennessee Department of Correction and included in the report of that audit.

SCOPE AND METHODOLOGY OF THE FOLLOW-UP AUDIT

The activities of the Board of Parole were reviewed for the period September 2012 to September 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Methods used included

1. review of the current Board of Parole's disaster recovery plan;
2. review of the Board of Parole's posting of public notices of administrative meetings on the board's website, Facebook, and the state calendar, as well as via emails to other state agencies, legislators, and pubic media; and
3. review of the board's parole hearing files and applicable board policies and procedures.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

ORGANIZATION AND RESPONSIBILITIES

The Board of Parole is an independent agency composed of seven members appointed by the Governor. Members' terms last six years and may be renewed upon the Governor's recommendation. The board includes members from Tennessee's three grand divisions. (See Appendix.)

The board has the authority to parole eligible offenders who have served a certain percentage of their sentences and to revoke parole privileges if offenders do not comply with supervision rules and standards set upon their release. Additionally, the board considers requests for executive clemency and makes recommendations on those requests to the Governor.

The board's executive director is responsible for supervising the agency's day-to-day functions; for overseeing recruitment and supervision of staff; and for assisting the board in the development and implementation of policies, procedures, strategic plans, budgets, and reports.

During fieldwork for the 2012 performance audit of the Board of Probation and Parole, the board's responsibilities included the supervision of felony offenders on probation or parole. Chapter 727 of the Public Acts of 2012 transferred the supervision of felony offenders released on probation and parole, as well as the administration of the community corrections grant program, to the Tennessee Department of Correction, effective July 1, 2012 (with full implementation required by January 1, 2013). The current Board of Parole divisions are described below. See page 4 for the board's organization chart.

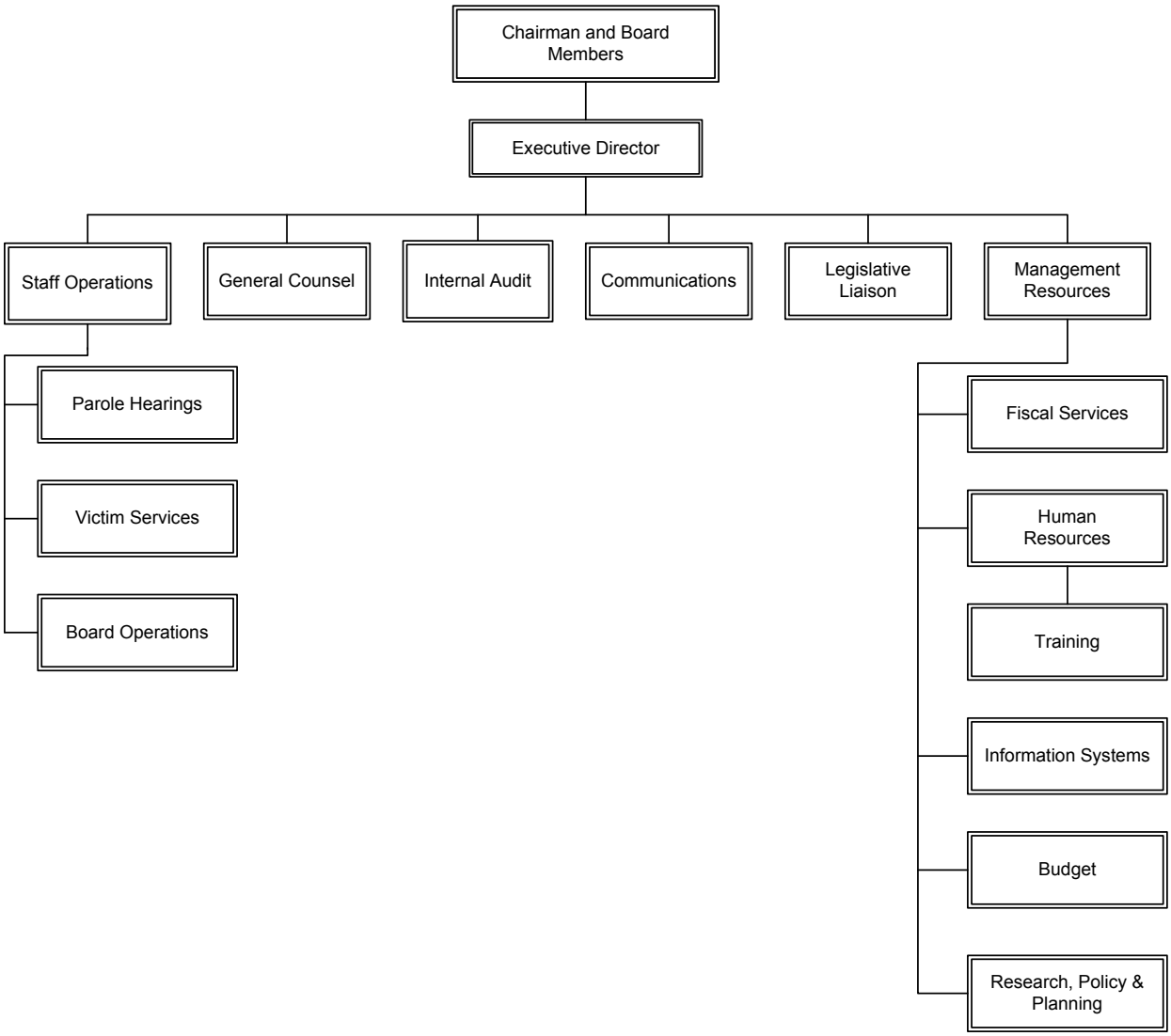
The Parole Hearings Division supports the board in carrying out its statutory mandate to conduct parole hearings. Parole hearing officers are appointed by the chair of the Board of Parole and are empowered to conduct parole hearings for eligible offenders in local jails; state prisons; and other detention facilities throughout the state, as well as to provide board members with non-binding recommendations. The Parole Hearings Division also processes all appeal applications for the board.

The Victim Services Division assists crime victims in Tennessee by helping them navigate, understand, and participate in the parole hearing process. The division works to ensure that the voices of victims and survivors of crime are heard, valued, and included, in an effort to hold offenders accountable, prevent future harm, and enhance community safety.

The Board Operations Division prepares cases for parole hearings after the Department of Correction certifies offenders eligible for parole consideration (Docket Unit); creates, maintains, and tracks the parole files used by the board in the parole hearing process (File Room); and issues release certificates when the board grants parole to an offender (Certificates). When the board conducts an executive clemency hearing, a summary of the hearing and a non-binding recommendation are submitted to the Governor.

Other support divisions include General Counsel; Internal Audit; Communications; Legislative Liaison; Fiscal Services; Human Resources; Training; Information Systems; Budget; and Research, Policy, and Planning.

Board of Parole
Organization Chart
July 2013



CONCLUSIONS

Our follow-up review indicated that the board had taken some action to address the three findings in the September 2012 performance audit that are applicable to the current Board of Parole, and all of the problems identified in those findings have either been resolved or partially resolved.

The board has improved its disaster recovery plan

The September 2012 performance audit found that the board's disaster recovery plan lacked the elements necessary to ensure the board could resume functioning and performing essential duties in the event of an emergency. The audit recommended that the Board of Probation and Parole should thoroughly document specific disaster recovery procedures and actions to be taken, from the declaration of a disaster until normal business operations can be resumed. The plan should contain adequate, detailed information to permit staff to use it as a stand-alone field manual. In addition, the plan should be reviewed, updated, tested, and reapproved as processes change and, at a minimum, annually. The plan should be submitted to the Tennessee Emergency Management Agency and made readily available to board employees.

The auditors reviewed the prior audit working papers and identified nine weaknesses in the board's prior disaster recovery plan. We compared these weaknesses to the August 2013 plan and found that the board had addressed the weaknesses. The finding has been resolved.

Posting of meeting notices to the general public has improved, but the board should develop formal written procedures

The September 2012 performance audit of the Board of Probation and Parole found the board's procedures for providing meeting notices for the general public primarily consisted of posting notices in the elevator lobby on the 13th floor of the Parkway Towers building, the board's central office location. The audit recommended that the board strengthen its formal written policies and procedures by mandating the posting of meeting dates on the board's website, in field offices, and/or in local newspapers, sufficiently in advance of meetings to ensure notification of the public and to comply with public meetings law. Section 8-44-101, *Tennessee Code Annotated*, declares it to be "the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret." Section 8-44-102, *Tennessee Code Annotated*, states that "all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee." Section 8-44-103, *Tennessee Code Annotated*, requires any governmental body holding a meeting to give adequate public notice of such meeting.

We reviewed the seven administrative board meetings held between September 2012 and September 2013 to determine whether the board had posted notices of these meetings on its website, on the state calendar, and on the board's Facebook page, as well as how many days' advance notice the board gave the public. The table below shows the date of each Board of Parole administrative board meeting and the number of days of advance notice provided.

Board of Parole
Dates of Administrative Meetings and
Days of Advance Notice Provided
September 2012 to September 2013

	Days of Advance Notice Provided		
Meeting Date	**Board Website**	**State Calendar**	**Board Facebook Page**
September 26, 2012	9 days	15 days	Not posted
October 17, 2012	15 days	7 days	7 days
November 9, 2012	10 days	7 days	7 days
January 30, 2013	135 days	120 days	6 days
April 3, 2013	12 days	7 days	2 days
June 26, 2013	282 days	267 days	Not posted
September 25, 2013	79 days	79 days	7 days

Source: Board of Parole website, Facebook, and Tennessee State Calendar.

In addition to the notification avenues in the table, the Board of Parole sends meeting notices by email to members of the General Assembly; certain local officials; and individuals at several state agencies, including the Department of Correction and the Office of the Comptroller of the Treasury. Finally, the Board of Parole's Communications Director said that as of October 2013, notices of meetings were again being sent to the Associated Press (AP), following nine months that the AP did not receive notices because of an oversight. We found that the board's posting of meeting notices to the general public has improved.

This follow-up confirmed that formal written procedures have not been developed. We recommend that the board develop formal written procedures and guidelines on proper posting of notices for the board's administrative meetings. Because of the improvements that have been made, we consider this finding mostly resolved.

With a few exceptions, the board has complied with state law regarding hearing decisions; furthermore, decision letters denying parole have included a discussion of appeal rights

The September 2012 performance audit found that, in some instances, the board still failed to comply with state law regarding hearing decisions; furthermore, decision letters denying parole omitted appeal rights. The audit recommended that the Director of Board Operations collaborate with other divisions of the Board of Probation and Parole, such as Information Systems and Field Services (a part of the Tennessee Department of Correction effective July 1, 2012), to implement manual and automated controls, to strengthen parole hearing notification

procedures, and to ensure compliance with statutes. The 2012 audit further recommended that any revisions or updates to the board operating procedures be made and posted to the intranet. Finally, the 2012 audit recommended that the board revise the hearing decision letters to include appeal rights for the offender, ensuring that the board's communication of appeal rights to the offender is documented.

According to both board policy and Section 40-28-505(b), *Tennessee Code Annotated*, offenders; officials (the presiding judge, district attorney, victim witness coordinator, and sheriff); and interested parties, such as victims and the victims' family or friends, should receive a parole hearing notice within 30 days of the scheduled parole hearing date. The board's procedures also require parole hearing notices to be sent to interested police chiefs within 30 days of the scheduled parole hearing date. Parole revocation, rescission, and probable cause hearing notices must be received within three days of the scheduled hearing date.

For this follow-up audit, we selected a nonstatistical random sample of 60 parole hearing files from August 1, 2012, through September 30, 2013. We replaced five of the originally selected files because the files were either out of the office for hearings or had been shredded after the offender had completed his or her required supervision. During the review, one file that had been unavailable because of a hearing was returned; therefore, we included it, for a total of 61 parole hearing files reviewed. We determined whether the offenders, officials, and interested parties had received appropriate notice of the scheduled hearing. We also verified whether the offender, officials, and interested parties had received the board's final hearing decision notification, as required by statute and board policy, and whether the decision notification included the offender's right to appeal the board's decision. The results of the audit file review, including explanations for large numbers of nonapplicable results, are summarized below.

Summary of Compliance with Notification Requirements
August 1, 2012, to August 31, 2013

Requirement 1
Was a parole hearing notice sent to the offender at least 30 days prior to the hearing date (or at least 3 days prior for parole revocation/rescission/probable cause/time-setting hearings)?
Number of relevant cases: 61 Number not in compliance: 0

Requirement 2
Was a parole hearing notice sent to the officials (judge, district attorney, victim witness coordinator, and sheriff) at least 30 days prior to the hearing date (or at least 3 days prior for parole revocation/rescission/probable cause/time-setting hearings)?
Number of relevant cases: 61 Number not in compliance: 1

Requirement 3
Was a parole hearing notice sent to the chief of police at least 30 days prior to the hearing date (or at least 3 days prior for parole revocation/rescission/probable cause/time-setting hearings)?
Number of relevant cases: 23 Number not in compliance: 0

Note: Board staff reported to the auditors that only five county police chiefs (Shelby, Davidson, Hamilton, Knox, and Rutherford) have requested the parole hearing notice and final hearing decision notification, resulting in a large number of irrelevant cases.

Requirement 4
Was a parole hearing notice sent to interested parties at least 30 days prior to the hearing date (or at least 3 days prior for parole revocation/rescission/probable cause/time-setting hearings)?
Number of relevant cases: 15 Number not in compliance: 1

Note: Most of the files reviewed did not have interested parties listed in the Department of Correction's Tennessee Offender Management Information System, eTOMIS, resulting in a large number of irrelevant cases.

Requirement 5
Was a final hearing decision notification sent to the offender within seven days of the date of the final decision, as required by the board's procedural manual?
Number of relevant cases: 53 Number not in compliance: 1

Requirement 6
Was a final hearing decision notification sent to interested parties within seven days of the date of the final decision, as required by the board's procedural manual?
Number of relevant cases: 12 Number not in compliance: 1

Note: Most of the files reviewed did not have interested parties listed in eTOMIS, resulting in a large number of irrelevant cases.

Requirement 7
Was a final hearing decision notification sent to officials within 30 days of the date of the final decision?
Number of relevant cases: 54 Number not in compliance: 0

Requirement 8
Did the final hearing decision notification to the offender include information concerning the offender's right to appeal the board's final decision?
Number of relevant cases: 51 Number not in compliance: 1

Note: In addition to reasons detailed in the notes above, cases may not be relevant because the parole hearing had been canceled or because the board is not required to provide a final hearing decision notification for hearings such as time-setting hearings or probable cause hearings.

For the files we reviewed, all offenders received the required parole hearing notice within the 30-day or 3-day time period. Only 1 of 61 parole hearing files (2%) lacked documentation that the required officials received the parole hearing notice within 30 days. One of 15 interested parties (7%) requesting notice of parole hearings did not receive the notice within the 30-day time period.

We also found that 1 of 53 offenders (2%) failed to receive the board's final hearing decision notification within the appropriate 7-day time period. One of 12 interested parties (8%)

requesting notification of the board's final hearing decision failed to receive the notification within the 7-day time period.

For the files reviewed, the board sent the final hearing decision notifications within the required 30 days to all 54 officials who had requested the information. One of the 51 final hearing decision notifications sent to offenders did not include the offender's right to appeal the board's decision, but the board sent this notification before adding the offender's right to appeal to the notification format.

We found that, with minor exceptions, the board complied with notification requirements. Except for the few instances noted above, the board has resolved the weaknesses noted in the September 2012 performance audit regarding parole hearing notices and documentation of the offender's appeal rights.

APPENDIX

Title VI and Other Information

The Tennessee Human Rights Commission (THRC) issues a report, *Tennessee Title VI Compliance Program*, that details each agency's federal dollars received, Title VI complaints received, whether the agency's Title VI implementation plans were filed timely, and any THRC findings taken on an agency. According to the THRC report for fiscal year 2013, the Board of Parole was one of 35 agencies found to be in compliance with the Title VI reporting guidelines and requirements. The report also indicated that THRC had received and referred two human rights related complaints to the board during fiscal year 2013. However, the board reported and provided documentation that THRC should not have forwarded these complaints to the board, but rather to the Department of Correction, because the subjects of the complaints were under the Department's jurisdiction.

According to *The Budget 2013-2014*, the Board of Parole did not receive any federal funding or grants in fiscal year 2011-2012, and no federal funds were estimated to be received for fiscal year 2012-2013.

Below is a listing of board members and a breakdown of board staff by position, gender, and ethnicity.

Board of Parole Members and City
October 2013

Chairman Richard Montgomery	Sevierville
Patsy Bruce	Nashville
Ronnie Cole	Dyersburg
Gary Faulcon	Nashville
Tim Gobble	Cleveland
Joe Hill	Union City
Lisa Jones	Savannah

Board of Parole Staff by
Position, Gender, and Ethnicity
October 30, 2013

Position	Gender			Ethnicity			
	Male	Female	Total	White	Black	Other	Total
Account Clerk	1		1	1			1
Accounting Technician 2	1		1			1	1
Administrative Assistant 1		1	1	1			1
Administrative Assistant 2		6	6	3	2	1	6
Administrative Assistant 3		1	1	1			1
Administrative Secretary		6	6	2	4		6
Administrative Services Assistant 4		1	1		1		1
Auditor 3		1	1		1		1
Clerk 2		1	1		1		1
Clerk 3	1	1	2	1	1		2
Correctional Program Director 1		1	1		1		1
Correctional Program Director 2		1	1		1		1
Executive Administrative Assistant 1		1	1	1			1
Executive Secretary 2		1	1		1		1
Fiscal Director 1	1	1	2	2			2
General Counsel 1		1	1	1			1
Human Resources Analyst 2		1	1	1			1
Human Resources Director 2		1	1	1			1
Information Officer		1	1	1			1
Information Resource Support Specialist 4	1		1	1			1
Information Systems Manager 2	1		1	1			1
Legal Assistant		1	1	1			1
Parole Board Chairman	1		1	1			1
Parole Board Member	4	2	6	5	1		6
Parole Hearings Assistant Director		1	1	1			1
Parole Hearings Director		1	1	1			1
Parole Hearings Officer	5	10	15	11	4		15
Parole Hearings Regional Supervisor	2	2	4	4			4
Probation/Parole Administrator	1	1	2	1	1		2
Probation/Parole Board Executive Director	1		1	1			1
Probation/Parole Planning and Research Director		1	1	1			1
Probation/Parole Training Director		1	1		1		1
Programmer/Analyst 3	1		1	1			1
Programmer/Analyst Supervisor	1		1	1			1
Sentence/Docketing Technician 2		5	5	2	3		5
Sentence/Docketing Technician 3		5	5		4	1	5
Statistical Analyst 3		1	1		1		1
Statistical Programmer Specialist 2	1		1	1			1
Total	**23**	**58**	**81**	**50**	**28**	**3**	**81**
Percentage	**28%**	**72%**	**100%**	**62%**	**35%**	**3%**	**100%**