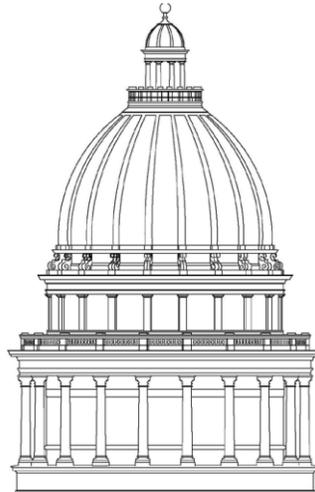


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2022-14



**A Performance Audit of the  
Board of Pardons and Parole**

November 2022

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





# Office of the Legislative Auditor General

Kade R. Minchey, Legislative Auditor General

W315 House Building State Capitol Complex | Salt Lake City, UT 84114 | Phone: 801.538.1033

November 15, 2022

## **The Utah State Legislature:**

Transmitted herewith is our report, *A Performance Audit of the Board of Pardons and Parole* (Report #2022-14). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

This audit was requested by Representative Karianne Lisonbee, Representative Brady Brammer, Senator Kirk Cullimore, Representative Jon Hawkins, and Senator Ann Millner as part of an audit request which also resulted in two companion reports, released alongside this report – *A Performance Audit of the Oversight and Effectiveness of Adult Probation and Parole* (Report #2022-13) and *A Limited Review of the Coordination Between Public Safety Entities* (Report #2022-15).

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any items contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade R. Minchey, CIA, CFE  
Auditor General  
kminchey@le.utah.gov





## PERFORMANCE AUDIT

### ► AUDIT REQUEST

This audit is one of three components of a comprehensive audit requested by the Legislative Audit Subcommittee concerning the release and supervision of individuals released from prison or jail. The audit request includes a review of the Board of Pardons and Parole's (BOPP, the Board) processes for releasing individuals from prison. We also followed up on previous recommendations from our 2016 audit, *A Performance Audit of the Board of Pardons and Parole* (2016-01).

### ► BACKGROUND

The Board, which consists of five full-time members and no more than five pro tempore members, has statutory authority to make decisions to pardon or parole offenders. Utah operates in an indeterminate sentencing system which allows the Board to exercise substantial discretion in making its decisions. The Board follows the Sentencing Commission's sentencing guidelines but may deviate from its recommendations given aggravating or mitigating circumstances.

# The Board of Pardons and Parole



## KEY FINDINGS

- ✓ The Board still lacks a clearly defined paroling philosophy and could better ensure public safety is appropriately prioritized.
- ✓ Opportunities exist to strengthen the Board's organizational structure through development of a management plan and improvements to its strategic plan.
- ✓ Additional opportunities exist to improve the Board's transparency of its operations and decisions through more reporting.
- ✓ The Board can ensure that it follows due process and probable cause standards and best practices through a review of its policies and processes.



## RECOMMENDATIONS

- ✓ The Board should clearly document its philosophy and review its decisions for consistency.
- ✓ The Board should improve its operations by creating a management plan and revising its strategic plan to include data elements, performance goals, and strategies.
- ✓ The Board should improve transparency by publicly providing additional metrics on its operations and decisions.
- ✓ The Board should review its policies and processes to ensure that it meets probable cause and due process best practices and standards.



## REPORT SUMMARY

### *The Board Can Better Define Its Paroling Philosophy*

The Board does not clearly articulate its philosophy as recommended in the 2016 audit. This was meant to unify Board members through a common philosophy that could guide parole decisions. The Board should also analyze its decisions to determine consistency and if the Board's philosophy is being followed.

### *The Board Can Strengthen Its Organizational Structure and Operations*

Our 2016 audit identified the need for the Board to create a management plan to differentiate the decision-making responsibilities of Board members from other administrative functions at the Board. The Board has yet to create this management plan.

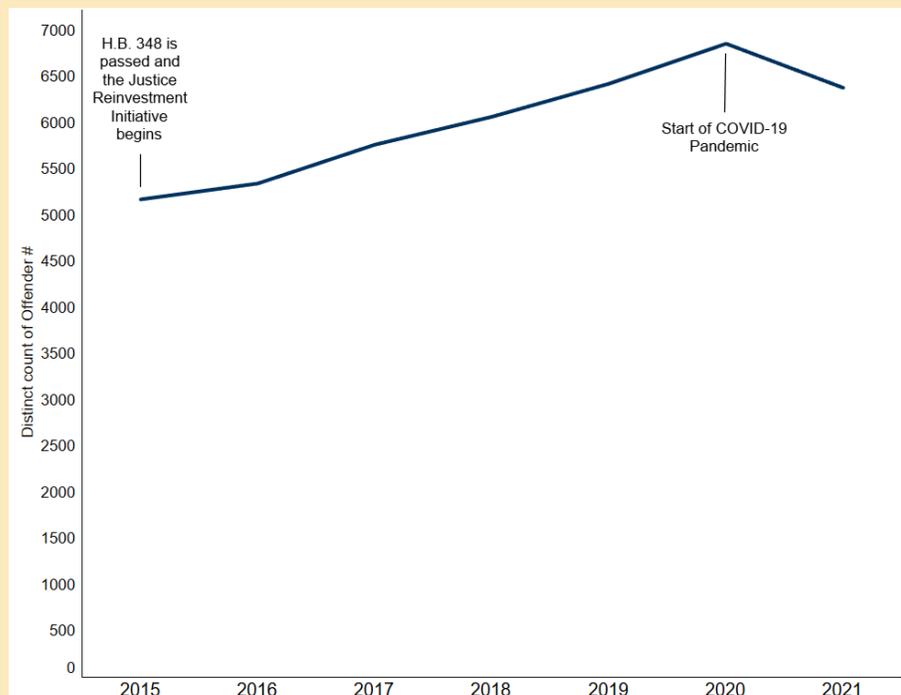
### *Utah's Parolee Population Has Grown Since the Implementation of the Justice Reinvestment Initiative*

Utah's parole population increased after the implementation of the Justice Reinvestment Initiative and continued to rise until it saw a slight decline at the start of the COVID-19 Pandemic. The Board's jurisdiction is made up of all offenders in prison or on parole. Adult Probation & Parole supervises those released by the Board but offenders on probation do not fall under the Board's jurisdiction.

Doing so would allow Board members and staff to be more effective in fulfilling their duties. The Board's strategic plan should also be updated to include data, measures of performance, and strategies. The Board should also link its performance measures to its goals.

### *Additional Reporting of the Board's Operations and Decisions Can Improve Transparency*

The Board now publicly provides data on the number of decisions made and population statistics. However, the Board does not provide data that shows the factors that influence its decisions or other important data elements and performance measures. Its rationale sheets are also vague and do not provide for adequate understanding of how the Board came to its decisions.



# REPORT TO THE UTAH LEGISLATURE

Report No. 2022-14

## **A Performance Audit of the Board of Pardons and Parole**

November 2022

Audit Performed By:

Audit Manager	Brian Dean, CIA, CFE
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# Chapter I Introduction

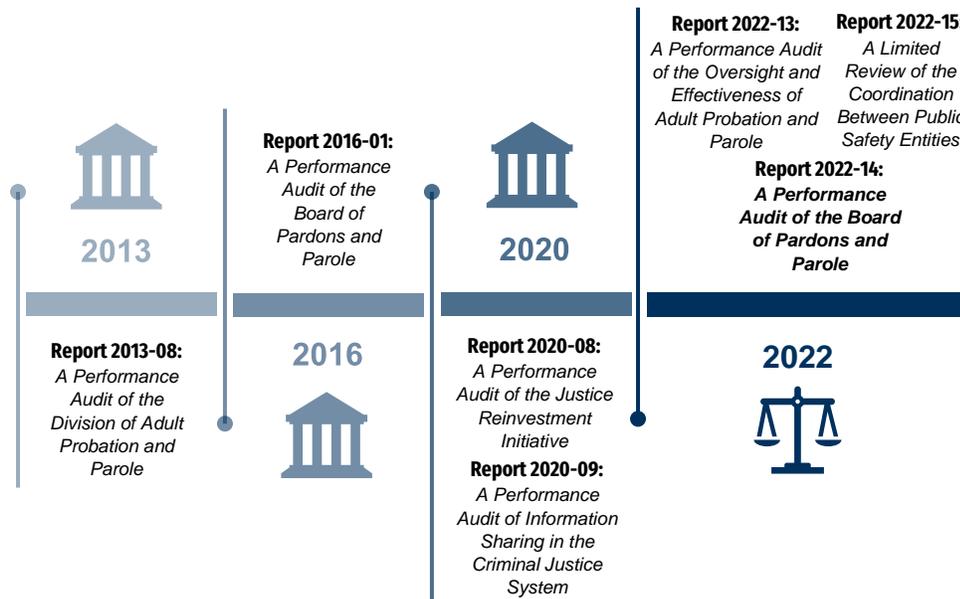
Utah’s Board of Pardons and Parole (BOPP or Board) plays a critical and unique role in the state’s criminal justice system. Last year the Board made about 13,500 decisions, including releasing offenders from prison, setting the conditions of release and supervision, and responding to parole violations. The Board consists of five full-time members and not more than five pro tempore members. These members are appointed by the governor, with consent of the Senate, for a five-year term. Utah’s BOPP has considerable discretion because of wide sentencing timeframes coupled with an indeterminate system. This report examines opportunities for the Board to improve its decision-making, operations, and transparency in their use of public resources and their influence on public safety.

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**Last year the Board made about 13,500 decisions, including the decision to release offenders on parole, their parole conditions, and responses to parole violations.**

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**Figure 1.1 This Audit is One of Three Components of a Comprehensive Audit Concerning the Release, Oversight and Effectiveness of the Supervision of Individuals Released From Prison or Jail in Utah.** The companion reports focus on the effectiveness of community supervision by Adult Probation and Parole and the coordination between public safety entities. Previous related reports are listed below.



## Previous Audit Found Opportunities for the Board to Better Use Its Broad Discretion

Our previous audit, released in 2016—*A Performance Audit of the Board of Pardons and Parole*,<sup>1</sup> found opportunities for the Board to better implement broad discretion and recommended improvements to BOPP’s oversight, structure, decision-making, data collection, and business operations. The status of the 2016 recommendations is summarized below; the status of the individual recommendations is noted throughout this report and in Appendix B of this report.



On the whole, the Board has made progress since the previous audit, but there are additional opportunities for improvement, as discussed throughout this report. For example, we found that the Board still needs to clarify its paroling philosophy. While the Board has a strategic plan, it lacks measurable goals, and needs to update its organizational structure. The Board has taken steps to adopt an electronic file management system and improve data reporting capabilities; however, additional data reporting on the Board’s impact and decision-making would improve transparency.

## BOPP Has Substantial Authority and Discretion to Impact Criminal Justice

The Board has been granted statutory authority to exercise discretion in determinations that affect criminal offenders, victims, their families, communities, and taxpayers. An indeterminate sentencing system allows the Board to tune its decisions to the specifics of each situation. Because the Board’s decisions are final and unappealable, they carry a heavy burden. It is difficult to validate whether the Board’s decisions are consistent and fair, as BOPP does not track the key factors that influence the Board’s decisions—a topic discussed in Chapter IV of this report.

<sup>1</sup> Office of the Legislative Auditor General, State of Utah. *A Performance Audit of the Board of Pardons and Parole* (2016-01). [https://olag.utah.gov/olag-doc/16\\_01rpt.pdf](https://olag.utah.gov/olag-doc/16_01rpt.pdf)

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**The Board has made progress since the previous audit overall but additional opportunities to improve remain.**

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**The Board has statutory authority to exercise discretion in its decisions and their decisions are final and unappealable.**

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## BOPP Determines When to Parole an Offender

"Parole" is supervision of individuals in the community *after their release from prison*, but prior to the termination or expiration of their sentence. While on parole, the individual is supervised by the Utah Department of Corrections' (UDC) Division of Adult Probation and Parole (AP&P). The Board establishes the conditions an individual must follow while on parole. All parolees are given standard parole conditions as part of the parole agreement, but the Board may also establish special conditions that the individual must follow while on supervision.

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**The Board establishes conditions of parole and AP&P supervises the parolees.**

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**Figure 1.2 General Process from Crime to Parole.** Five major steps occur during the process that leads up to possibility of parole.



Source: Auditor generated using information from UDC and BOPP.

## Utah's Constitution Authorizes BOPP to Use Statutory Discretion

*Utah Constitution Article VII, Section 12* authorizes BOPP statutory<sup>2</sup> discretion in determining who is granted parole from prison. In Utah, the basic sentencing terms (without enhancements) are as follows:

- Zero to five years for third-degree felonies
- One to fifteen years for second-degree felonies
- Five years to life for first-degree felonies

Once an offender is sentenced to prison, the decision of whether to parole resides with the Board. According to the Utah Sentencing

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<sup>2</sup> *Utah Code 77-27-5*

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**The Board's decision may or may not reflect the sentencing guideline and potentially could be the full length of the sentence.**

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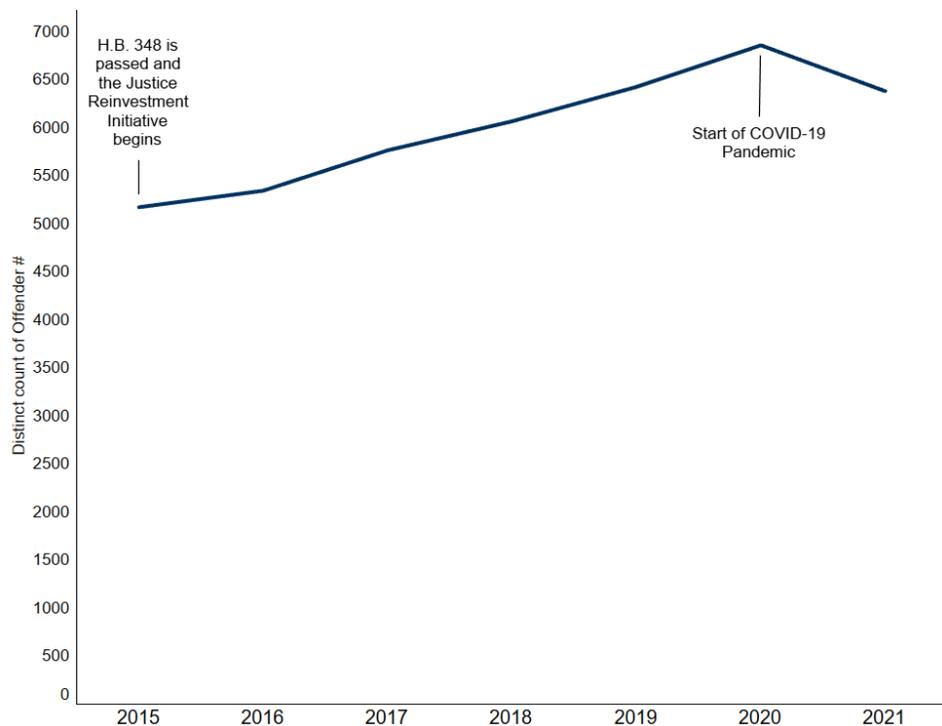
Commission's 2021 *Adult Sentencing and Release Guidelines*,<sup>3</sup> this decision “may, or may not, reflect the guideline recommendation, and may be up to the full length of the indeterminate range pronounced by the sentencing judge.”

In addition to determining the length of incarceration and parole supervision, the Board has power to terminate a sentence, impose conditions of parole, impose fines, issue warrants, and grant pardons on a case-by-case basis.

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**Figure 1.3 Utah's Parole Population.** The population of parolees on community supervision has increased since 2015.

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Source: Auditor generated using data from the Board of Pardons and Parole.  
Note: This chart includes anyone who was one parole during this time period.

### **Parole Board Systems Vary State to State**

The functions, authority, and responsibilities of parole boards differ from state to state. A fundamental difference among states is the

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<sup>3</sup> *Utah Sentencing Commission. Adult Sentencing and Release Guidelines, 2021.*  
<https://justice.utah.gov/wp-content/uploads/2021-Sentencing-Release-Guidelines.pdf>

handling of release decisions. Sixteen states have determinate sentencing, which means that offenders are released from correctional supervision at predetermined times. The other thirty-four states, including Utah, have indeterminate sentencing, which gives parole boards the discretion to determine whether and when to grant or deny parole.

### **BOPP Considers Sentencing Guidelines and Many Other Factors When Making Parole Decisions**

The Utah Sentencing Commission developed sentencing guidelines that the Board uses to determine an inmate's length of incarceration. However, the guidelines are a starting point and intended to inform the sentencing authority, but do not dictate their decision. The guidelines recommend penalties based on offense severity and criminal history. The guidelines also include a series of calculated matrix forms. The general matrix form has seven crime categories and five criminal history levels that the Board consults in determining the prison term. In addition to sentencing guidelines, the Board also considers other factors, such as:

- Nature of the crime
- Offender's criminal history
- Whether weapons were used
- Victim impact
- Inmate behavior and achievements
- Treatment history
- Education
- Risk and need assessments

### **Scope and Objectives**

The purpose of this audit is to assess the effectiveness and oversight of the Board of Pardons and Parole. The remaining chapters of this report address the following issues and provide pertinent recommendations:

- **Chapter II** discusses the changes in the Board's philosophy and the resulting effects on decision-making.
- **Chapter III** considers the progress the Board has made in its operations and additional steps to be taken.

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**The sentencing guidelines act as a starting point for the Board and recommend penalties but do not dictate the decision.**

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- **Chapter IV** provides actions for the Board to improve its transparency.
- **Chapter V** discusses how the Board handles probable cause determinations and due process in accordance with the 1972 United States' Supreme Court case, *Morrissey v. Brewer*.

# Chapter II

## The Board's Paroling Philosophy is Not Clearly Understood or Documented

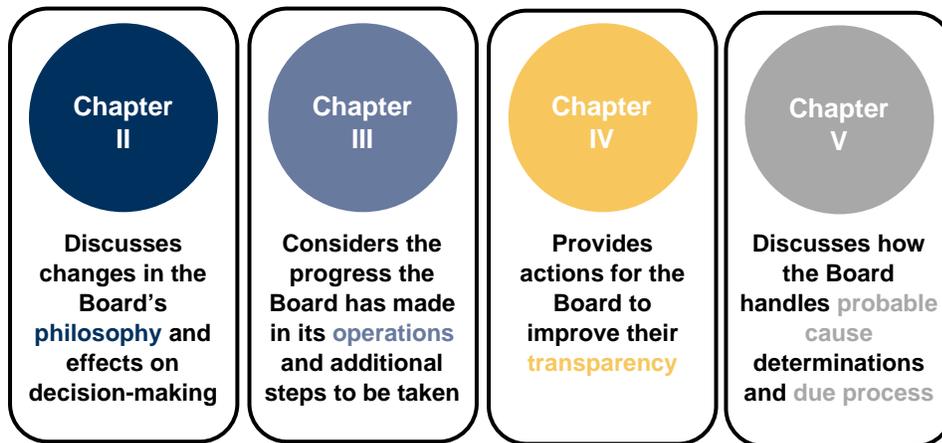
The Board of Pardons and Parole (BOPP or Board) is largely a decision-making organization, making thousands of decisions each year that have a significant effect on the lives of offenders, the public, and the entire criminal justice system. Our 2016 audit of the Board noted that the lack of a common paroling philosophy may be the cause of the large number of inmates and advocacy groups expressing concerns about the inconsistency of paroling decisions. While the Board has implemented a structured decision-making (SDM) tool, the Board's philosophy has not been adequately addressed. Because of this, the Board's reasons for its decisions are confusing to offenders and to the public and should be further clarified. The recommendations made in the previous report concerning the Board's philosophy and the status of their implementation are outlined on the next page.

This audit report provides a summary of the Board's interrelated functions. We first examine the Board's philosophy, followed by an analysis of the Board's operations, transparency, and the process of probable cause determinations and due process.

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**The Board has created a structured decision-making tool but has not clarified its philosophy which creates confusion.**

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This chapter details the current gaps in the Board’s philosophy and builds on how BOPP can strengthen its philosophy and decision-making. Chapters III and IV of this report also build on similar themes of improvement and accountability.

Adopt a policy that documents its philosophy and goals and update to meet the goals of new board members or to incorporate new evidence-based practices.	In-Process
Adopt and implement a new rationale sheet that provides meaningful information to inmates and collects useful data for analysis.	In-Process
Adopt and implement a structured decision-making tool, which should include the elements of risk and need based on evidence-based practices.	Implemented

Source: Auditor generated based on information provided by the Utah Board of Pardons and Parole.

## **BOPP Still Needs to Establish a Clear Paroling Philosophy and Ensure Public Safety Is Appropriately Prioritized**

Given Utah’s indeterminate sentencing structure, the parole board has flexibility to determine when inmates have sufficiently reduced their risk to society and are ready for release. This approach encourages individualized review, program participation, and good institutional behavior. It can also lead to sentencing disparity if a common paroling philosophy is not followed. Accordingly, the Board still needs to clarify and document its paroling philosophy. In addition, public safety with regard to parole decision-making is not fully articulated in statute, nor does statute articulate how BOPP will ensure public safety.

### **The Board Needs to Clarify Its Guiding Philosophy**

Our 2016 audit recommended that BOPP establish a common paroling philosophy to facilitate consistency in parole decisions. This was to be documented in policy and updated to meet the goals of new Board members and incorporate new evidence-based practices. However, the Board still has not clearly established its philosophy—an essential step that is also recommended by the National Institute of Corrections (NIC).

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**The Board still needs to clarify and document its paroling philosophy.**

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## National Institute of Corrections

*“... board members and executive staff should be able to ... Articulate clearly the philosophy, vision, and direction of parole in their jurisdiction, including their commitment to public safety and the manner in which they will achieve it.”*

Source: National Institute of Corrections. *Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies.*

Inmate advocacy groups and inmates have expressed continued concern that the state’s parole decisions are not consistent, noting that similar crimes receive widely different sentence lengths. This is a common concern in states that use an indeterminate sentencing structure, which increases the potential for sentencing disparity. While it is understood that different sentence lengths for similar crimes can be justified by aggravating factors, the ongoing potential for these differences continue to highlight the need for a common Board paroling philosophy to minimize disparity.

According to the Board, the guiding philosophy now includes the mission statement, sentencing guidelines and the SDM tools, with public safety being the primary focus. However, this philosophy is not clearly documented in policy. We identified BOPP’s policy, not updated since at least 2017, which includes the Board’s mission statement:

*The mission of the Utah Board of Pardons and Parole is to render just decisions regarding parole and supervision of offenders, consistent with federal and state constitutions and statutes. A primary objective is to provide optimum protection of the public and safeguard the rights, privileges and interests of victims and offenders.*

Some of the “Board Principles,” outlined on the next page, may read as guiding philosophies but are not inclusive. While the principles mention some aspects of decision-making and guidelines, the references are vague and do not discuss SDM tools, which were recently implemented to unite the Board members with a common philosophy, goals, and purposes to guide parole decisions.

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**Inmate advocacy groups and inmates have expressed concern that parole decisions are not consistent.**

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**The Board lacks clear documentation of its paroling philosophy to explain its decisions.**

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**Figure 2.2 Examples of BOPP’s Board Principles.** The Board’s policy and procedure includes their mission statement and some Board Principles. However, they are vague and do not include important decision-making tools, such as the SDM.



Source: Auditor generated using information from BOPP’s Policy and Procedures.

**A Commitment to Public Safety and How to Achieve It Is Not Fully Articulated by the Board**

The Board has not fully articulated its commitment to public safety and how it will achieve it, as recommended by NIC. According to the Board’s mission statement, “A primary objective is to provide optimum protection of the public and safeguard the rights, privileges and interests of victims and offenders.” However, this is vague and does not convey the prioritization of public safety, nor does it discuss how the Board will achieve it. Other states base their mission

**The Board has not fully articulated its prioritization of public safety or how it plans to achieve it.**

statement or philosophy on public safety and discuss how they plan to achieve it, such as through evidence-based practices.

**Figure 2.3 Other States Build Parole Mission Statements or Philosophies on Public Safety.** Idaho, Colorado, and New Mexico have articulated clear prioritization for public safety and provide strategies for how they will achieve it.



Source: Auditor generated using information from other states.

The Board should likewise define its efforts to improve public safety in its policy. To clarify the paroling philosophy, the Board should include revisions that incorporate SDM and ensure that the policy includes, (1) the direction of parole in its jurisdiction, (2) its commitment to public safety, and (3) how BOPP plans to achieve it. While this documentation is primarily for internal use, the Board should also make it publicly available to increase transparency and minimize questions the public may have concerning the Board's philosophy. Transparency is discussed in Chapter IV of this report.

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**Other states base their mission statement or philosophy on public safety and their plan to achieve it.**

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**The Board should document its philosophy and make it available to the public.**

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## Legislature Should Consider Requiring Public Safety Consideration in Statute

Public safety is not currently prioritized in the *Utah Constitution* or *Utah Code* regarding the Board and its decisions. However, public safety is noted as a factor of parole in *Administrative Rule R671-101*, which says “Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.” Other states use more explicit language that Utah could incorporate, as the language in statute has not been amended since 1996. Although *R671-101* was reviewed and renewed in 2021, the language has not changed since 2004. Figure 2.4 summarizes statutory language other states use.

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Other states use explicit language in statute to identify how public safety should be considered in parole decisions.

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### Figure 2.4 Other States Prioritize Public Safety in Statute.

Pennsylvania and Arizona account for public safety many times in statute regarding parole decisions.

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#### Pennsylvania



#### Examples of Public Safety in Statute

- **61 Pa.C.S. § 6137(a)(1)(ii)** General criteria for parole includes “...does not appear that the interests of the Commonwealth will be injured by the offender’s parole.”
- **61 Pa.C.S. § 6137(g)(4)(iv)** “There is no reasonable indication that the offender poses a risk to public safety.”

Source: Auditor generated based on Pennsylvania Statutes.

#### Arizona



#### Examples of Public Safety in Statute

- **A.R.S. § 31-411.01 A** “...the release is in the best interests of the people of this state.”
- **A.R.S. § 31-411 E** “...ensure that the best interests of the prisoner and the citizens of this state are served.”
- **A.R.S. § 31-414 A** “...parole is compatible with the welfare of society and is in the best interest of the state...”

Source: Auditor generated based on Arizona Statutes.

We cannot determine the effect of not explicitly prioritizing public safety above other considerations. However, emphasizing public safety in these ways is important, as policies and practices of parole officials shape and guide critical decisions that affect public safety. Therefore, we recommend that the Legislature consider requiring public safety considerations for parole in statute.

### **Rationale Sheets are Not Well Documented to Reflect Factors that Lead to Parole Decisions**

According to the 2021 *Adult Sentencing and Release Guidelines*, the Utah Sentencing Commission requires presentence investigators to document the aggravating and mitigating factors whether or not the guideline sentence is recommended. In addition, the commission notes, “Reasons should always be specified when the guideline sentence is not recommended.” *Administrative Rule R671-305-1* states:

*“Decisions of the Board will be reduced to a written order. Orders entered following original hearings, rehearings, special attention hearings, parole violation hearings, evidentiary hearings, and rescission hearings will be accompanied by a brief rationale for the order. [...] A copy of the order, and rationale statement if entered, shall be provided or mailed to the person who is the subject of the order.”*

According to the Board, the rationale sheet is meant to fulfill this rule requirement.

#### **National Institute of Corrections**

*“... board members and executive staff should be able to ... Explain the policies and tools in place to help identify risk factors or criminogenic needs within the offender population and to guide decision making.”*

Source: National Institute of Corrections. *Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies*.

The Board revised its rationale sheet after our 2016 audit recommended that BOPP adopt and implement a new “clear and direct” rationale sheet to provide meaningful information to inmates and collect useful data for analysis. The audit went further to say that BOPP should create a shorter list of decision justifications focused on public safety, that would provide inmates with useful information. While the Board’s current rationale sheet may provide some indication

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**Administrative Rule requires the documentation of the Board’s rationale for its decisions.**

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**The 2016 audit identified improvements to the Board’s rationale sheet.**

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**The Board's current rationale sheet does not provide adequate explanations of its decisions and cannot be used for analysis.**

about why the Board made its decisions, the information is limited to a small number of vague categories and does not provide adequate explanations. In addition, the information in the rationale sheet cannot be used for analysis, as the data appears only in a scanned form in UDC's Archivalware (UDOCA). Furthermore, the data are not reported in a way that would help to inform the Board's philosophy and do not reflect the factors that led to the decision. Being able to report on BOPP's philosophy will help ensure an accurate portrayal of what the Board sees as important.

During our audit process, Board members noted that they are working on a new electronic rationale sheet, which will allow them to link decisions and pull data. The new system will autogenerate language regarding the rationale of the decision and can be tailored by the member, which should help recipients better understand the decision. Examples of additional details that will be available in the electronic rationale sheet are presented below.

### **Utah BOPP—New Detailed Language to Explain the Rationale of the Board's Decision**

#### **Nature of the Offense Aggravating:**

- The facts or nature of your offense(s) are more egregious than other offenses with the same sentencing guideline crime category. This includes when multiple victims or repeated acts are combined in the conviction, or the damage/loss is greater than typical crimes in this category.

#### **Multiple Incidents:**

- Your conviction combines or includes conduct that occurred over a long period of time or included multiple incidents into one or more charges. The sentencing guidelines are for a single incident associated with each offense. Multiple incidents of criminal activity are an additional aggravating factor that is not included in the sentencing guidelines.

#### **Risk or Behavior/Needed Risk Reduction:**

- Your demonstrated risk or ongoing behavior warrants additional incarceration for risk reduction.

#### **Prior Supervision:**

- The Board considered poor performance under prior supervision (probation or parole) as a factor in this decision.

#### **Institutional Behavior-Good:**

- The Board considered your positive progress and good behavior while incarcerated.

*Source: Auditor generated using information from BOPP's Policy and Procedures.*

Presently, the only information an inmate receives about the content of the Board’s decision is in the rationale sheet. However, advocacy groups and inmates have continued to express concerns as they attempt to understand the rationale sheets. Clear rationales are important as vague justification for the decision—and the lack of guidance inmates received for self-improvement—can be counterproductive to good rehabilitation and good outcomes.

### **BOPP Is Not Able to Analyze Decisions to Determine Consistency or Adherence to the Board’s Philosophy**

The SDM tool is intended to create common goals and objectives to promote Board unity and establish foundational principles to guide parole decisions. The result should be increased fairness and consistency in release decisions. However, it is unclear what effect the SDM has had, as BOPP has not been able to analyze decisions made since the implementation of the tool in February 2021. With measures such as sentencing guidelines or recidivism, multiple years of data collection are required to assess these outcomes. Historically, the Board has had limited electronic data in some key areas, and many of the analyses were not possible until the electronic system<sup>4</sup> was built and multiple years of data has been gathered. It is only with the new electronic system and additional years of data that BOPP will be able to run other analyses. Once sufficient data are collected, consistency should be evaluated to identify potential changes needed to the SDM tool and ensure alignment with the Board’s philosophy.

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**Vague justification for decisions and a lack of guidance to inmates can be counterproductive.**

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**The Board has been unable to analyze its decisions for consistency and alignment to the Board’s philosophy.**

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<sup>4</sup> The electronic system is in place but will not be finalized until 2023. This is discussed further in Chapter III of this report.

## National Institute of Corrections

*“It is important that all case decisions regarding offender release, setting conditions for release, and responding to violations align with a parole board’s stated values and objectives, evidence-based practices, and the best judgment of its decisionmakers.”*

Source: National Institute of Corrections. Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies.

We recognize that analyzing decisions for consistency and fairness, due to the complex and individualized nature of the issues, is more nuanced than running a statistical analysis of decisions. Such analysis may include employing other methods to determine if the Board's philosophy and decisions are being consistently followed, as recommended by NIC. For example, Pennsylvania's Parole Board conducts monthly comparisons of the guidelines and the recommendations made to ensure decisions are consistent.

According to the Board, with the release of the Voting and Results module, BOPP will be able to examine the aggravating and mitigating factors related to over- and under-guideline release decisions, including risk and needs assessments, and other information. Data are essential to score and measure performance and impact. Although there are multiple approaches and measures BOPP could use to examine decisions and outcomes, the Board should continue to identify the measures to be used for evaluation and make changes as needed. The Board also should analyze outliers to identify the cause of varying decisions and determine if further changes should be made. Key data elements and performance measures are discussed further in Chapter III of this report.

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**The new Voting and Results module will enable the Board to examine aggravating and mitigating factors.**

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## Recommendations

1. We recommend the Board of Pardons and Parole update its policy to ensure it encompasses all parts of its guiding philosophy, including public safety, and make the policy publicly available.
2. We recommend the Legislature consider amending statute to include language that prioritizes public safety.

3. We recommend the Board of Pardons and Parole revise the rationale sheet and ensure that it is clear and direct, providing meaningful information to inmates.
4. We recommend the Board of Pardons and Parole analyze parole decisions for consistency.
5. We recommend the Board of Pardons and Parole amend the structured decision-making tool as further evidence-based information becomes available.

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# Chapter III

## The Board Has Made Significant Improvements Since the Previous Audit But Opportunities for Improved Operations Still Exist

Our 2016 audit – *A Performance Audit of the Board of Pardons and Parole*<sup>5</sup> identified opportunities to strengthen various operational areas and made recommendations in key areas where Board of Pardons and Parole (BOPP or Board) could make improvements to its planning, oversight, and structure. Our current audit found that the Board has made improvements in these areas, but still has steps to take to fully implement some of these recommendations. The previous recommendations for BOPP operations, along with their implementation status are listed below. This chapter details the context of the recommendations and the Board’s progress to date.

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**The Board has made improvements to its operations since the 2016 audit, but still has additional steps to take.**

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Evaluate its internal organizational structure to ensure continued improvement is achieved and formalize in rule a management plan.	<b>Not Implemented</b>
Develop a strategic plan and make it publicly available.	<b>In-Process</b>
Adopt an electronic file management system.	<b>In-Process</b>
Measure its impact on the criminal justice system through targeted performance measures.	<b>Implemented</b>
Create and monitor key data elements.	<b>Implemented</b>
Create an executive director position and give more responsibilities to this position.	<b>Implemented</b>

Source: Auditor generated based on information provided by the Utah Board of Pardons and Parole.

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<sup>5</sup> Office of the Legislative Auditor General, State of Utah. *A Performance Audit of the Board of Pardons and Parole* (2016-01). [https://olag.utah.gov/olag-doc/16\\_01rpt.pdf](https://olag.utah.gov/olag-doc/16_01rpt.pdf)

## Opportunities Exist to Strengthen the Board's Organizational Structure

The 2016 audit recommended that the Board evaluate its internal organizational structure to ensure continued improvement is achieved. This included creating an executive director position and transferring more responsibilities to that position. We also recommended that the Board formalize a management plan in rule. Soon after the audit, the Board created an executive director position, known as the Director of Administrative Services (Director). However, the Board has not yet created a management plan in *Administrative Rule*. We also found that the Board created a strategic plan, as recommended in the previous audit, but the strategic plan does not include current challenges, data elements, and strategies to achieve its goals, as was also recommended.

### The Board Should Clarify Responsibilities By Updating Policies and Creating a Management Plan

The Board took steps to create the Director of Administrative Services (Director) position soon after the 2016 audit. However, defining the position's responsibilities has been an ongoing process and turnover in this position made it necessary for the Board Chair to step in at times to oversee some of the administrative functions of the Board. With the recent hiring of a new Director, the Board Chair has transferred much of the administrative responsibilities back to that position.

The 2016 audit also recommended that the Board create a management plan and formalize it in *Administrative Rule*. This was intended to clearly articulate the separation of roles between the Board and the Director. The Utah State Tax Commission's management plan, as outlined in Administrative Rule 861-1A-16, clearly details internal control responsibilities such as reporting procedures, delegation authority, required contact and correspondence.

In addition, the *Standards for Internal Control in the Federal Government* (Green Book) of the U.S. Government Accountability Office's (GAO) recommends that organizations define levels of responsibilities and oversight. This is to ensure that proper internal controls are in place to govern the entity. The Green Book categorizes the roles in an entity's internal control system as follows:

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**The Board created the position of Director of Administrative Services but still lacks a management plan.**

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## GAO Standards for Internal Control

**Oversight Body:** Responsible for overseeing the strategic direction and obligations related to the accountability to the entity.

**Management:** Directly responsible for all activities, including the design, implementation, and operating effectiveness of an entity's internal control system.

**Personnel:** Help manage, design, implement, and operate.

*Source: Auditor generated using information from GAO's Standards for Internal Control.*

We found that the Board has yet to create a management plan, as previously recommended. The Board currently has an organizational chart that displays the general hierarchy, but the separation of responsibilities is not clearly articulated. We found that other states, such as Idaho and Arizona, define the role of the Executive Director in relation to the Board members and Chair in statute, providing a clear separation between their boards and administrations. This clarifies important internal control responsibilities and provides an understanding of board operations.

The Board has an internal policy, last updated in 1992, that lists positions and corresponding responsibilities, but the policy is missing key leadership positions that are now in place and includes others that are out of date. According to the Board, a group is currently working on updating the Board's policies and procedures manual. The Green Book recommends that management document and periodically review internal control responsibilities for each unit in an organization.

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**The Board lists several job responsibilities in policy but many of these are out of date.**

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## GAO Standards for Internal Control

*"Management documents in policies for each unit its responsibility for an operational process's objectives and related risks ... Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks."*

*Source: Auditor generated using information from GAO's Standards for Internal Control.*

Regularly updating policies, along with clarifying positions and responsibilities and how they relate to other positions, will help the Board remain relevant to the current organization. Additionally, implementing our previous recommendation of creating a

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**The Board created a strategic plan, but it does not include challenges, strategies, data, or measurable goals.**

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management plan in *Administrative Rule* will help the Board solidify its internal organization and ensure it is adequately structured.

### **The Board Should Update Its Strategic Plan to Include Current Challenges, Data Elements, and Strategies to Achieve Goals**

Since the last audit, the Board created a strategic plan that includes a mission statement, vision, value statement, goals, and objectives. Although the plan was released internally in 2018, it was not made public until recently, when we followed up on the recommendations from the previous audit. The Board's strategic plan does not focus on current challenges the Board is facing or how to address them. Nor does it include key data elements, such as time under the Board's jurisdiction and recidivism, as noted in the previous audit. Furthermore, the plan includes the following general goals (instead of measurable goals) but does not include strategies needed to achieve them.

The Board of Pardons and Parole's Strategic Plan Goals:

1. Quality and equitable decision-making processes.
2. Maximum organizational effectiveness and capacity.
3. Optimal transparency and collaboration.

#### **National Institute of Corrections**

*"... board members and executive staff should be able to ... Articulate clearly the philosophy, vision, and direction of parole in their jurisdiction, including their commitment to public safety and the manner in which they will achieve it."*

Source: National Institute of Corrections. *Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies*.

According to the National Institute of Corrections (NIC), the Board should clearly outline its vision for parole and how it plans to achieve this direction. Concerns were noted by the Board about tying measures to goals, since changes in policy may affect these measures. However, we found that several other parole boards or releasing authorities in other states use their strategic plans to set goals and have clear methods to measure progress and follow up on their completion.

**Figure 3.1 Four Nearby States Demonstrate Measurable Goals in Their Strategic Plans.** Utah’s BOPP should revise its strategic plan to include measurable goals and establish a clear method to follow up on progress made.



Source: Auditor generated using information from other states’ strategic plans.



For example, the strategic plan of **Colorado’s State Parole Board** states a broad goal that captures its overall mission. This broad goal is similar to the goals in BOPP’s strategic plan. However, Colorado’s State Parole Board’s strategic plan goes further to include a

list of specific and measurable objectives that define what success will look like. The Board sets the expectation that these objectives will be completed before the release of the next strategic plan. The strategic plan also highlights challenges and proposed solutions. These objectives and challenges are outlined in Appendix D.



**Idaho’s Commission of Pardons and Parole** is required to annually update its strategic plan. Their strategic plan includes measurable goals that are broken out into objectives, performance measures, and benchmarks. The Idaho Division of Financial Management requires that the Executive Director

follow up on these goals given a specific list of expectations for the process. The performance measures for each goal are reported in a separate “Performance Report”, that uses data to compare targets against their actual performance. An example of one of Idaho’s goals and linked objectives, performance measures and benchmarks is found in Appendix D.

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**Other states include challenges and strategies as well as measurable goals in their strategic plans.**

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The **Arizona Board of Executive Clemency** has a five-year strategic plan that outlines performance indicators and objectives in relation to its goals. Progress toward these goals is reported in the Board’s annual report, adding an additional layer of accountability to the Board’s strategic plan. One example of these goals is listed in Appendix D.



Lastly, the strategic plan of the **Wyoming Board of Parole** includes various data elements and identifies the “most important performance measures to the Board of Parole.” These include the percentage of offenders who finished their sentence after a successful period of parole supervision (as opposed to finishing the sentence in prison) and three-year recidivism rates compared against prison discharges. The board uses these data points to measure the effectiveness and quality of its decision-making and then applies the findings to strategies that can accomplish their goal of improving these performance indicators in the future. These performance measures and strategies are found in Appendix D.

According to the Board, they have some concerns about how to accurately measure the Board’s performance because it feels that changes in some outcomes may be more reflective of changes in criminal justice policy. However, in addition to the examples of how other states determine goals and corresponding strategies, NIC states that parole boards should determine if their work is meeting the intended goals. Including measures for program effectiveness in BOPP’s strategic plan would help to more directly link its goals to its performance. Selecting specific measures is discussed later in this chapter.

**National Institute of Corrections**

*“Like any healthy organization, parole boards would do well to assess strategically whether their work is meeting its intended goals.”*

Source: National Institute of Corrections. Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies.

BOPP should revise its strategic plan to contain information on current challenges, data elements, performance goals, and strategies. Doing so will help the Board assess whether its work is meeting its intended goals.

**NIC states that parole boards should determine if their work is meeting intended goals.**

## The Board Has Taken Steps to Improve Their Data Reporting Capabilities

The 2016 audit recommended that the Board improve its data reporting capabilities, as it was not sufficiently obtaining and tracking key data elements. This weakened the Board's ability to understand how its decisions were affecting the criminal justice system. While BOPP has taken steps to improve this aspect of its operations, more work is needed to connect the Board's data to goals. This is further discussed later in this chapter.

### The Board Has Greatly Improved Its Ability to Track and Monitor Data

Our 2016 audit recommended that the Board create and monitor key data elements. As mentioned in the previous audit, the Board obtained funding from the Legislature to hire a research analyst. BOPP has since improved many of its data-reporting capabilities, and Board members receive a variety of reports that help them make more informed decisions. The Board now analyzes and compiles data to create weekly, monthly, quarterly, and annual reports that are reviewed by Board members and staff as well as a variety of other stakeholders. Examples of these reports are listed below; a full list is found in Appendix E.

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**The Board has made many improvements in its data-reporting capabilities since the 2016 audit.**

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#### Utah BOPP - Reports

##### Weekly:

- Prison and Parole Population
- Warrants Issued
- Bed Space Rescissions

##### Monthly:

- Terminations of Boards Jurisdiction
- Individuals in Jail on Parole
- Electronic File Conversion

##### Quarterly:

- Time Cut Reason
- RIM Jail Sanctions

##### Annual:

- Decision and Hearing Trend
- Recidivism Rates by Type
- Consistency with Guidelines

*Source: Auditor generated based on information provided by the Utah Board of Pardons and Parole.*

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**Completing the electronic file management system will increase data reporting capabilities.**

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As the Board has completed modules of the electronic file management system, new opportunities for data analysis have become available. This will likely continue as the Board implements additional modules.

In addition to these reports, the Board recently published data on its website about prison and parolee populations. However, BOPP does not currently provide data on other criminal justice metrics that were suggested in the previous audit or the reasons behind its decisions. This lack of transparency is further addressed in Chapter IV of this report.

## **The Board Should Identify Important Performance Measures and Link Them to Its Goals**

The 2016 audit also recommended that the Board measure its impact on the criminal justice system through targeted performance measures. Performance measures use key data elements to measure program effectiveness. NIC expresses the importance of having performance measures, as noted below.

### **National Institute of Corrections**

*“Parole leaders should use critical indicator information to identify issues or areas of opportunity and take prompt action concerning these matters. When parole leaders consistently rely on and respond to objective information in pursuit of organizational goals, they demonstrate the values and priorities of the organization.”*

Source: National Institute of Corrections. Parole Essentials: Practical Guides for Parole Leaders - Paroling Authorities' Strategic Planning and Management for Results.

These measures, referred to as “critical indicators”, should be used to identify issues or areas of opportunity for prompt action. The Board currently tracks many data elements and performance measures, such as prison releases by category, recidivism, successful completions of sentences under parole supervision, and consistency of decisions to guidelines. However, measuring the Board’s goals using performance metrics could provide greater direction in its efforts. This would also provide an opportunity for the Board to create measurable goals in its strategic plan as discussed earlier in this chapter.

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**The Board has many performance measures, but these are not linked to goals.**

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## Parole Boards in Other States Link Goals with Performance Measures

According to the Board, it has some concerns about how to accurately measure the Board's performance since much of the work they do results in outcomes that are affected by multiple variables. Additionally, the Board also has concerns about setting goals related to recidivism because it does not wish to incentivize making one decision over another. We found that the goals of parole boards in other states often correspond directly to their performance measures, including recidivism. These are outlined below.

As mentioned previously, the strategic plan of the Wyoming Board of Parole identifies multiple performance measures, outlined below, it uses to gauge the Board's effectiveness and the value of its efforts. The Board starts with a broad goal, then articulates its relevant performance measures to accomplish its overall goal.

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**Other states link their performance measures to specific goals.**

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### Wyoming Board of Parole

#### Example of Goal Set in Relation to Performance Measures:

- **Goal:** To improve performance of the Board in the future.
- **Performance Measures:**
  - Percentage of parole discharges compared with prison discharges.
  - Parole recidivism versus prison recidivism for any crime.
  - Parole recidivism versus prison recidivism for a felony.
- **Strategies:**
  - Validate performance measures and their use in future planning.
  - Continue to work with other criminal justice stakeholders in the executive, legislative, and judicial branches of government to explore options to help reduce and more effectively manage Wyoming's offender population.
  - Undertake additional training and continue the review of internal policies and procedures in order to ensure efficiency and effectiveness in the Board itself.

*Source: Auditor generated based on Wyoming's Board of Pardon's strategic plan.*

The Arizona Board of Executive Clemency also links performance measures to its goals. For example, in its strategic plan, the Board had the goal of meeting hearing timeframes in a timely manner. The Board used a performance measure to identify that inmates were not receiving timely commutation hearings due to a backlog of commutation cases. In response, the Board tailored their broad goal to be to increase the number of commutation hearings per month to reduce the backlog.

### Arizona Board of Executive Clemency



#### Example of Performance Measure Linked to a Goal:

- **Problem:** Inmates are not receiving a commutation hearing in a timely manner as there is a backlog of commutation cases.
- **Scope:** There are 58 outstanding commutation hearings with received dates.
- **Goal Statement:** Reduce the number of outstanding commutations so that incoming requests can be scheduled within 60 days of receipt by the agency.
- **Analysis:** Increase the number of commutation hearings each week.
- **Action:** Schedule four to five commutation hearings per week.

*Source: Auditor generated based on the strategic plan of the Arizona Board of Executive Clemency.*

Identifying and using performance measures that are linked to goals will allow the Board to better measure its impact and promote accountability to the public. These performance measures should be tied to goals in the Board's strategic plan. The Governor's Office of Planning and Budget (GOPB) published a guide for Utah agencies to follow in establishing strategic plans. It outlines the need for state agencies to measure their performance according to other parts of their strategic plan, including goals. This will promote data-driven decision-making in the Board and show progress towards the Board's mission.

## The Scope of Implementing the Board's Electronic File Management System Resulted in a Long-Term Project

Our 2016 audit recommended that the Board adopt an electronic file management system to replace an aging system that was vulnerable

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**GOPB demonstrates the need for performance measures that relate to goals.**

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to errors when making and entering Board decisions and calculating sentence length and credit for time served. At the time, the system also had limited ability to track critical data and performance metrics. This restricted transparency and created operational inefficiencies in workflows and information sharing with other criminal justice agencies. In response to our audit recommendation, the Board has worked with the Utah Department of Corrections (UDC) and the Division of Technology Services (DTS) to create an electronic file management system which is nearly complete. While this project will have taken more than five years to complete, our analysis concluded that the scope of the development and implementation of the new system justified a long-term project. When the project is finished, it should address many of the operational inefficiencies identified in the previous audit.

### **The Board and DTS Have Nearly Completed the Electronic File Management System**

To address our 2016 audit recommendation, the Board worked with DTS to create an electronic file management system in UDC's O-Track system. Currently, staff can conduct most of their work in the electronic file management system. However, Board members are not yet able to vote or fill out rationale documents electronically. Instead, this is still done manually which requires many of the other documents to be printed and uploaded. The Board expects this final module of the electronic file management system to be completed in 2023.

The project's wide scope has been the main reason for the length of time needed for implementation. For example, creating an online portal for the various job functions, types of hearings, and decisions for an organization without a prior online system has taken time to complete. DTS and BOPP have worked in tandem to ensure that the necessary planning and steps were completed before other aspects of the project began. BOPP has also worked with DTS to ensure that old files are uploaded to the server, and that all 76 necessary processes have been included in the system. Additionally, the different forms used for various situations or hearings have been created and automated. The final step is to create a voting function that incorporates all possible scenarios of the Board's current voting method. The electronic file management system should help reduce errors and promote better security by clarifying Board member

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**Implementing an electronic file management system took many years because of its scope and is nearly complete.**

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**DTS and the Board have worked to automate the Board's processes and historical records.**

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communication and enabling electronic voting, which will eliminate the need to manually enter voting outcomes. This will improve the accuracy of the Board's decisions and calculations.

### **The Board Has Taken Steps to Improve Data Validation and Internal Controls Through Electronic File Management**

Our prior audit noted that a change in BOPP policy required the two clerks who enter Board decisions to examine each other's work; however, the clerks were not subject to any other internal or external review. In addition, the 2016 audit found that after the results were entered, Board members did not review final orders to ensure accuracy. Therefore, information could be misinterpreted, inaccurately entered, or manipulated—a concern that was raised by several Board staff. To reduce possible human errors, it was recommended that the Board adopt an electronic voting function, as case analysts admitted that mistakes, though rare, are sometimes made. This electronic voting system was meant to incorporate BOPP's current voting structure into an electronic file management system.

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**The Board has created a data validation system that should prevent human errors.**

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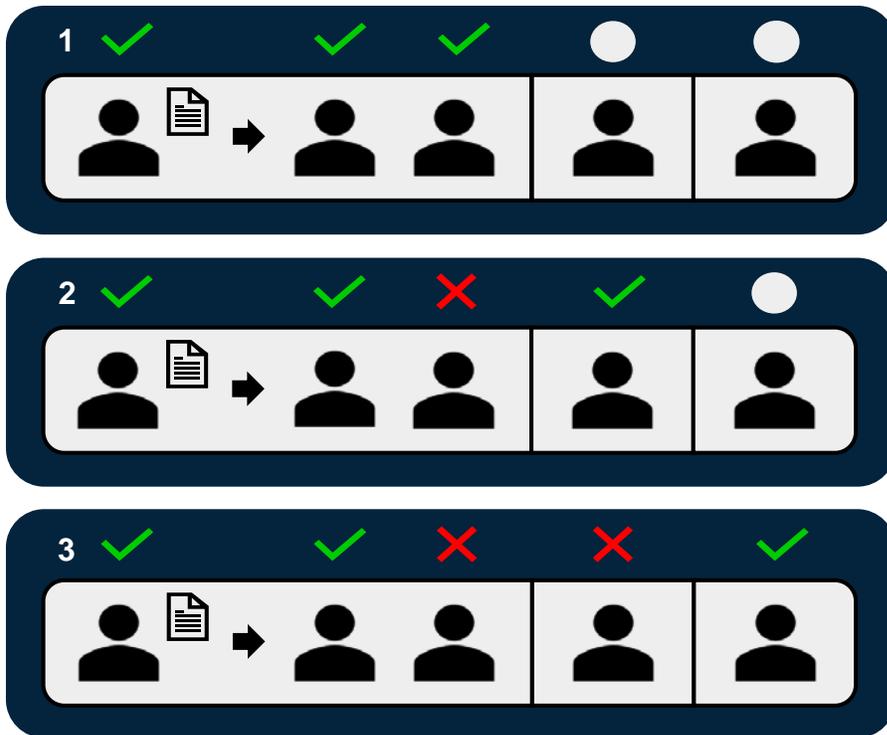
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**The new electronic file management system incorporates the Board's voting processes.**

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To make a decision to parole or pardon an offender, the Board must have a majority of votes among the five Board members. Except in special scenarios, this may be obtained without having the full Board review the case, although all may have an opportunity to review, vote, and comment. The voting process is summarized in Figure 3.2. Each vote begins with three members—the required number of votes needed to come to a decision (box 1). However, if one member votes against the proposal, then a fourth Board member is brought in (box 2). If the additional Board member votes with the proposal, then the Board has achieved a three-member majority. If the member votes against the proposal, a fifth Board member is brought in to cast the deciding vote (box 3). However, at any time, a Board member may call for all five members to review and vote on a case.

**Figure 3.2 The Board’s Voting Process.** Except in certain situations, the Board must have three votes in favor or against to reach a decision. In the case of dissension, the Board will assign more Board members to the decision until a majority consensus is reached.



Source: Auditor generated based on information provided by The Utah Board of Pardons and Parole.

The electronic file management system and voting function will enable the Board to operate more efficiently and accurately. Fully incorporating the voting function and revising or adding additional modules, when necessary, will allow for improved operations and continual improvement of the Board’s new system. Therefore, we recommend that the Board continue to work with DTS to implement the system and execute additional modules as necessary.

**Fully incorporating the electronic file management system and making necessary changes in the future will enable continual improvement.**

## Recommendations

1. We recommend the Board of Pardons and Parole update its policies and procedures to include up-to-date responsibilities for current positions and revise as necessary.
2. We recommend that the Board of Pardons and Parole create a management plan that outlines relationships between the oversight body, management, and personnel and formalize it in *Administrative Rule*.
3. We recommend that the Board of Pardons and Parole revise its strategic plan to include challenges the Board is facing, key data elements, and specific performance goals and strategies to reach those goals and continue to make it publicly available.
4. We recommend that the Board of Pardons and Parole identify its most important targeted performance measures and link them to specific goals.
5. We recommend that the Board of Pardons and Parole continue to work with the Division of Technology Services to implement its O-Track Electronic File Management System and execute additional modules as necessary.

# Chapter IV

## The Public Still Lacks Key Data Elements and Information on Board’s Operations

Our 2016 audit of the Board of Pardons and Parole (BOPP or Board) identified the importance of publicly providing information such as a strategic plan, key data elements, and performance metrics. The audit also recommended greater transparency, so that stakeholders and the public would be informed about BOPP’s operations and goals. While the Board has taken steps to address these recommendations, we found that improvements are still needed to increase its transparency.

Develop a strategic plan and make it publicly available.	In-Process
Increase its transparency by publicly providing more information on its performance and operations.	In-Process

Source: Auditor generated based on information provided by the Utah Board of Pardons and Parole.

### The Board Should Improve Transparency by Reporting Additional Data on the Board’s Operations and Decisions

The 2016 audit recommended that the Board track key data elements and performance measures such as recidivism, length of stay, prison releases by category, number of those who successfully completed their parole, number of paroles closed by revocation to prison, and consistency of Board decisions with guidelines. While the Board now tracks these data points, it does not share them with the public. Instead, the Board provides population data and the number of decisions made—factors that do not adequately demonstrate the Board’s impact on the criminal justice system.

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**The Board now tracks data elements and performance measures, but these are not shared publicly.**

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## BOPP Should Report Data on the Board’s Impact on the Criminal Justice System to Improve Transparency

The Board provides prison and parole population data on its website; however, it does not report on recidivism, time under the Board’s jurisdiction, prison releases by category, number who successfully completed their parole, and consistency of Board decisions with guidelines. Although the Board has made improvements by adding population data to its website, publicly reporting on the metrics mentioned in our previous audit will add an important layer of transparency. Doing so will also increase accountability by indicating the effect parole has on public safety, as recommended by the National Institute of Corrections.

### National Institute of Corrections

*“... board members and executive staff should be able to ... Provide data and statistics that indicate the effect parole has on public safety.”*

Source: National Institute of Corrections. Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies.

We found that other states report many of these data points publicly, and that such reporting is often required by statute. This is shared in the form of annual or quarterly reports that give insight into the Boards’ operations and how they impact the criminal justice system. Examples of the contents of these reports are outlined below.

### Colorado State Parole Board

**C.R.S. 17-22.5-404 (6)(e)(I)** requires that the Colorado State Parole Board issue a report regarding outcomes of decisions. Report contents may vary, but have included the following data points:

- Release and deferral decisions bypassing guidelines
- Number of inmates in risk and readiness categories
- Number of release and deferral decisions by the Board
- Total number of agreements and departures between Board decisions and guidelines
- Number of agreements and departures by matrix categories
- Reasons for departure from recommendations for all decisions
- Reasons for departure by matrix categories

Source: Auditor generated based on Colorado statutes.

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**Other states report data publicly which is often required by statute.**

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### Idaho Commission of Pardons and Parole

**Idaho Code § 20-1005 (8)** requires that the Idaho Department of Corrections and Commission of Pardons and Parole submit a report that describes the most common reasons for delay or denial of release. Historically, this report has also included a formerly required statistic of the percentage of property and drug offenders released before they serve 150 percent of the fixed portion of their mandatory sentence.

Source: Auditor generated based on Idaho statutes.



### Georgia Board of Pardons and Parole

**O.C.G.A. § 42-9-19** requires that the Georgia Board of Pardons and Parole create an annual report. The following are examples of what is included:

- Number of releases
- Number of pardons
- Success rate on parole
- Revocations
- Number of decisions
- Number of commutations
- Records transferred to electronic system
- Victim services statistics
- Average time serviced for violent felonies
- Parole population
- Parole violations
- Number of warrants

Source: Auditor generated based on the Georgia Code.



### Nevada Board of Parole Commissioners

**N.R.S. § 213.10887** requires that the Nevada Board of Parole Commissioners compile and maintain detailed information regarding parole. This report must be generated and published on their website every three months and must contain the following:

- Reasons for each decision to grant, deny, revoke, or continue parole
- Number of decisions made to grant, deny, revoke, or continue parole

**N.R.S. § 213.10885(5)** also requires that the Board pull a sample and determine the probability of breaking the law again if parole is granted or continued. The results must be made available to the public.

Source: Auditor generated based on Nevada statutes.

Many of the data elements and performance measures used by other states were mentioned in the last audit as being important for BOPP to track. Providing fundamental data points such as these will help the public understand more about the Board's operations and its impact on the criminal justice system.

### **The Board Should Improve Transparency by Reporting Statistics on the Reasons For Its Decisions**

The Board does not report statistics on the reasons for its decisions to grant, deny, or revoke parole when it goes above or below the sentencing guidelines. Among the four states noted previously, three monitor their reasons for decisions and share results with the public.

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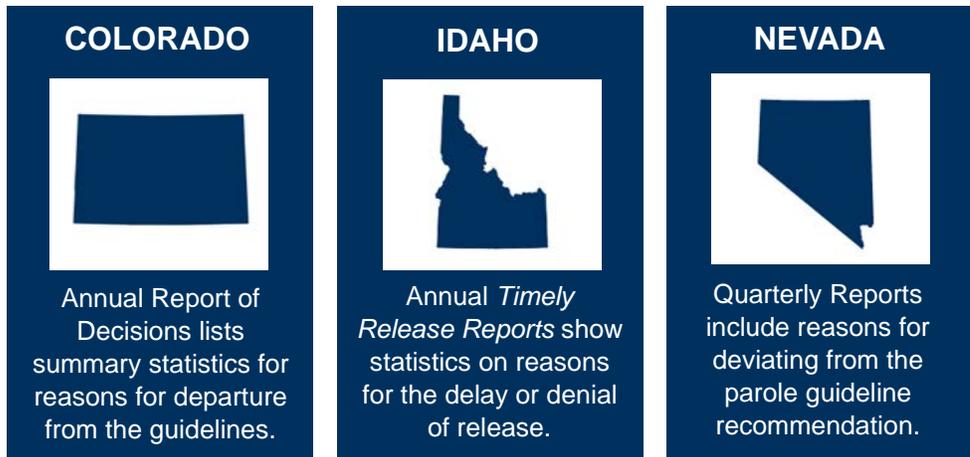
**The Board does not report data showing the factors for its decisions to go above or below the guideline recommendation.**

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**Figure 4.1 Three Nearby States Report Aggregate Statistics on Reasons for Their Decisions.** Utah's BOPP should increase transparency by publicly reporting aggregate statistics on decisions that depart from sentencing guidelines.

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Source: Auditor generated using information from other states' annual or quarterly reports.

The sentencing guidelines<sup>6</sup> provide a time frame for the Board to work within; however, reasons for deviation from the guidelines are not reported to the public, except via scanned copies of individual rationale sheets, which are available upon request. The Prison Policy Initiative, a non-partisan research and advocacy group, conducted a review of each states' parole system and noted the importance of making this information public.

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<sup>6</sup> Utah Sentencing Commission. *Adult Sentencing & Release Guidelines, 2021.*

## Prison Policy Initiative

*“Institutions with oversight over parole boards should receive reports detailing release rates and their deviations from recommended guidelines and assessments. While parole boards are still expected to exercise personal discretion—otherwise, all parole decisions could be made by a computer—parole boards should be required to publicly explain why they might be consistently denying release when published guidelines recommend release.”*

Source: Prison Policy Initiative. *Grading the Parole Release Systems of 50 States*.

While exercising discretion is a fundamental part of Utah’s parole system, explaining common reasons for deviation from the sentencing guidelines will add an important layer of transparency to the Board.

The lack of transparency in the Board’s decisions may contribute to a perceived lack of accountability to the public and lawmakers. Sharing aggregate data on the aggravating and mitigating factors behind the decision to release an offender, when deviating from the sentencing guidelines, will promote greater understanding of the important factors the Board considers in its decision-making processes.

### **Transparency Has Improved, But Additional Opportunities Exist**

The Board has made efforts to increase transparency in response to the recommendations made in the 2016 audit. For example, Board hearings are now publicly available online with the individual decisions listed on the website. The Board’s website contains valuable information about how the Board functions. We also found that the Board has taken steps to improve its rationale sheet and recently made its strategic plan public. However, additional improvements to the rationale sheet, such as ensuring that responses clearly articulate the reason for granting, denying, or revoking parole, along with improvements to the strategic plan, will further improve the Board’s transparency.

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**Explaining reasons for deviation from sentencing guidelines will improve transparency and promote greater understanding of how the Board makes its decisions.**

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## **Improving the Board's Rationale Sheet Could Better Clarify the Boards' Decisions for Offenders**

The Board's rationale sheet is how the Board informs offenders and their families of the reasoning for their decisions to grant or deny parole. The sheet includes a list of aggravating and mitigating factors that contributed to the Board's decision. However, we found that these factors are vague, making it difficult to understand the rationale for the Board's decision.

The 2016 audit noted that BOPP had 33 aggravating factors and nearly as many mitigating factors on its rationale sheet. The newest version of the rationale sheet, which was developed after the 2016 audit, has been overly condensed and includes only five mitigating factors and three aggravating factors. This approach often omits specifics in explaining the Board's decision. Additionally, we found examples of rationale sheets that were left blank. Vague justification for decisions, especially that are outside the sentencing guidelines, and the lack of guidance given to inmates, can be counterproductive to good rehabilitation and positive outcomes.

As BOPP transitions to an electronic voting format, the Board will also be updating the rationale sheet. During our audit process, the Board shared its plan for an updated rationale sheet which provides an automatic, written response linked to each factor. These responses can be edited to include additional information specific to the case. Each Board member will also include their own rationale summarizing their decision, rather than one Board member speaking for the majority. This approach may provide greater detail than what is seen in the Board's current rationale sheets. However, to further improve its transparency, the Board should ensure that these responses clearly articulate the reasons for choosing to grant, deny, or revoke parole.

## **Revising the Board's Strategic Plan to Include Measurable Goals Would Improve Transparency**

Since the last audit, the Board created a strategic plan and released it internally in 2018. Although this plan originally was not posted on the website, it was made publicly available in March 2022, after the beginning of this audit. The plan includes the Board's mission statement, vision, value statement, goals, and objectives. However, the

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**The current rationale sheet is vague and does not provide details about the contributing factors of Board decisions.**

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**The Board's draft of a new rationale sheet shows potential improvements.**

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Board has not included issues and challenges BOPP faces, key data elements, and strategies to achieve its goals, as recommended. As noted in Chapter III of this report, these elements are included in the strategic plans of several other states, providing transparency for the Boards' operations and objectives. This level of transparency is also an opportunity for the Board to demonstrate its commitment to public safety by addressing key issues in the criminal justice system.

In addition to the revisions recommended in Chapter III of this report, the Board should continue to make its strategic plan publicly available and provide additional information to increase transparency of its operations and objectives. Publicly sharing a strategic plan that includes the Board's current challenges, key data elements, and performance goals will allow stakeholders and the public to be well informed about the Board's operations, goals, and commitment to improving public safety. Such measures also will promote a greater understanding of the Board's role in the criminal justice system.

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**Continuing to publicly share the Board's strategic plan will promote a greater understanding of the Board's role.**

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## Recommendations

1. We recommend the Board of Pardons and Parole publicly provide metrics on its website, including but not limited to the following:
  - Recidivism measures
  - Time under Board jurisdiction
  - Prison releases by category
  - Measure(s) of a successful parole such as number of parole revocations
  - Consistency of Board decisions with guidelines
  - Aggregate reasons for departure from the sentencing guidelines
  
2. We recommend the Board of Pardons and Parole continue to make its strategic plan publicly available and update it to include what was discussed in Chapter III of this report.

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## Chapter V

# The Board of Pardons and Parole Should Determine If Its Processes Follow Probable Cause and Due Process Standards

As previously noted in this report, the Board of Pardons and Parole (BOPP or Board) makes thousands of decisions each year – 13,500 decisions in 2021. About 17 percent of those were decisions which revoked an offender’s parole. In our review, we found that *Utah Code* and *Administrative Rule*, along with the Board’s associated processes, should be evaluated to ensure adherence to probable cause and due process standards, as required in the US Supreme Court’s *Morrissey v. Brewer* case in 1972. We make no conclusion or determination that BOPP is not in compliance, but rather note the importance of BOPP to regularly review its processes thoroughly to ensure compliance and efficiency.

### BOPP Should Review Its Policies to Ensure They Reflect Best Practices Regarding Probable Cause and Due Process

It is necessary to continuously review processes and statutory and regulatory frameworks to ensure compliance with best practices, as noted by the National Institute of Corrections. The Board should evaluate and ensure that best practices are incorporated and changes to

#### National Institute of Corrections

*“... laws and rules change over time, and it is important for parole board members and executives to remain apprised of changes in the law over time. In reviewing the current application of laws and policies, parole board members and parole executives should be aware of the special legal issues or challenges in their jurisdiction ... Board members and executive staff should take seriously the need to understand recent changes and the reasons for potential concern. They would also do well to develop strategies that can ameliorate such concerns.”*

Source: National Institute of Corrections. *Parole Essentials: A Practical Guide for Parole Leaders - Core Competencies*.

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***Utah Code, Administrative Rule, and the Board’s associated processes should be evaluated to ensure adherence to probable cause and due process standards.***

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laws have been addressed, such as establishing probable cause and due process requirements outlined in *Morrissey*.

According to the US Supreme Court's *Morrissey v. Brewer* case in 1972, procedural due process requires the following:

*“Before a determination ... to revoke [an offender’s] parole can be made ... the principles of fundamental justice and fairness would afford the parolee a reasonable opportunity to explain away the accusation of a parole violation.”*

To satisfy this principle, it requires that,

*“... some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh, and sources are available.”*

*Morrissey* relates this process to that of a “preliminary hearing”, which has the purpose of determining whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. In *Morrissey*, the Supreme Court set the absolute minimum due process that is required before a parole authority, such as the Utah Board of Pardons and Parole, can revoke a person’s parole and return them to prison. Parole revocation deprives an individual of “conditional liberty,” which “is valuable and must be seen as within the protection of the Fourteenth Amendment.” Therefore, termination of conditional liberty “calls for some orderly process, however informal.” We recommend that the Board review its policies to ensure they reflect best practices regarding probable cause and due process.

### **Utah Code and Administrative Rule Have Conflicting Requirements for When Probable Cause Is to Be Established**

*Utah Code 77-27-11* states that a warrant may be issued prior to finding probable cause to believe that the parolee has violated the conditions of parole. However, *Administrative Rule (U.A.C. R671-510-1)* specifies that Board warrants are to be issued only after probable cause has shown that a parole violation has occurred. The Board should work with the Legislature to make revisions and ensure that these statutes and regulations are clear and consistent.

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**In *Morrissey*, the Supreme Court set the absolute minimum due process requirements for the revocation of parole.**

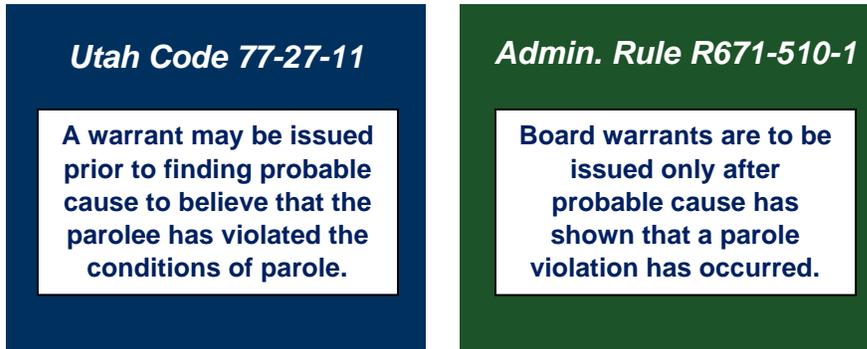
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**Utah’s language has conflicting requirements for when probable cause should be established.**

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**Figure 4.1 Comparison of Utah Code and Administrative Rule.** Currently, there are discrepancies between statute and *Administrative Rule* for what time probable cause is required.



Source: Auditor generated from state statute and administrative code.

We found that other states provide specific language related to preliminary or probable cause hearings. For example, Nevada statute requires an inquiry to determine probable cause to believe a violation occurred which then determines whether to hold the parolee for a Board hearing on parole revocation.

**Nevada**

**NRS § 213.1511** requires a probable cause inquiry -

*“Before a parolee who has been arrested and is in custody for a violation of his or her parole may be returned to the custody of the Department of Corrections for that violation, an inquiry must be conducted to determine whether there is probable cause to believe that the parolee has committed acts that would constitute such a violation.”*

Source: Auditor generated based on Nevada statutes.

This differs from Utah’s statutory language, previously noted, which is vague and does not call for a preliminary or probable cause hearing. Reviewing key legal issues such as probable cause and due process is an important part of operating within a criminal justice system. Therefore, we recommend the Board review its process and frameworks and make any identified changes.

**Utah statute is vague and does not call for a preliminary or probable cause hearing like in Nevada statute.**

## Recommendations

1. We recommend the Board of Pardons and Parole evaluate its existing processes to ensure best practices are incorporated and in compliance with probable cause and due process standards.
2. We recommend the Board of Pardons and Parole, after a thorough review of its policies and practices, bring any necessary statutory changes to the Legislature for consideration.
3. We recommend the Board of Pardons and Parole evaluate its regulatory framework outlined in *Administrative Rule* to ensure consistency with current and future statutory provisions.

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# Appendices

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## **Appendix A: Complete List of Audit Recommendations**

This report made the following fifteen recommendations. The numbering convention assigned to each recommendation consists of its chapter number and the recommendation number within that chapter.

### **Recommendation 2.1**

We recommend the Board of Pardons and Parole update its policy to ensure it encompasses all parts of its guiding philosophy, including public safety, and make the policy publicly available.

### **Recommendation 2.2**

We recommend the Legislature consider amending statute to include language that prioritizes public safety.

### **Recommendation 2.3**

We recommend the Board of Pardons and Parole revise the rationale sheet and ensure that it is clear and direct, providing meaningful information to inmates.

### **Recommendation 2.4**

We recommend the Board of Pardons and Parole analyze parole decisions for consistency.

### **Recommendation 2.5**

We recommend the Board of Pardons and Parole amend the structured decision-making tool as further evidence-based information becomes available.

### **Recommendation 3.1**

We recommend the Board of Pardons and Parole should update its policies and procedures to include up-to-date responsibilities for current positions and revise as necessary.

### **Recommendation 3.2**

We recommend the Board of Pardons and Parole should create a management plan that outlines relationships between the oversight body, management, and personnel and formalize it in *Administrative Rule*.

### **Recommendation 3.3**

We recommend the Board of Pardons and Parole revise its strategic plan to include challenges the Board is facing, key data elements, and specific performance goals and strategies to reach those goals and continue to make it publicly available.

### **Recommendation 3.4**

We recommend the Board of Pardons and Parole identify its most important targeted performance measures and link them to specific goals.

### **Recommendation 3.5**

We recommend the Board of Pardons and Parole continue to work with the Division of Technology Services to implement its O-Track Electronic File Management System and execute additional modules as necessary.

### **Recommendation 4.1**

We recommend the Board of Pardons and Parole publicly provide metrics on its website, including but not limited to the following:

- Recidivism measures
- Time under Board jurisdiction
- Prison releases by category
- Measure(s) of a successful parole such as number of parole revocations
- Consistency of Board decisions with guidelines
- Aggregate reasons for departure from the sentencing guidelines

### **Recommendation 4.2**

We recommend the Board of Pardons and Parole continue to make its strategic plan publicly available and update it to include what was discussed in Chapter III of this report.

### **Recommendation 5.1**

We recommend the Board of Pardons and Parole evaluate its existing processes to ensure best practices are incorporated and in compliance with probable cause and due process standards.

### **Recommendation 5.2**

We recommend the Board of Pardons and Parole, after a thorough review of its policies and practices, bring any necessary statutory changes to the Legislature for consideration.

### **Recommendation 5.3**

We recommend the Board of Pardons and Parole evaluate its regulatory framework outlined in *Administrative Rule* to ensure consistency with current and future statutory provisions.

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## Appendix B: Status of 2016 Recommendations

Our 2016 audit, *A Performance Audit of the Board of Pardons and Parole*,<sup>7</sup> noted opportunities for the Board to better deploy broad discretion and recommended improvements to BOPP’s oversight, structure, decision-making, data collection, and business operations. This appendix summarizes the current status of each recommendation from the 2016 audit.

Evaluate its internal organizational structure to ensure continued improvement is achieved and formalize in rule a management plan.	<b>Not Implemented</b>
Adopt a policy that documents its philosophy and goals and update to meet the goals of new board members or to incorporate new evidence-based practices.	<b>In-Process</b>
Develop a strategic plan and make it publicly available.	<b>In-Process</b>
Adopt an electronic file management system.	<b>In-Process</b>
Increase its level of transparency by publicly providing more information on its performance and operations, so stakeholders and the public can be well informed about the BOPP’s operations and goals.	<b>In-Process</b>
Adopt and implement a new rationale sheet that provides meaningful information to inmates and collects useful data for analysis.	<b>In-Process</b>
Adopt and implement a structured decision-making tool, which should include the elements of risk and need based on evidence-based practices.	<b>Implemented</b>
Review options to streamline the process for paroling less serious, low-risk offenders and only select options that maintain or improve criminal justice outcomes.	<b>Implemented</b>

<sup>7</sup> Office of the Legislative Auditor General, State of Utah. *A Performance Audit of the Board of Pardons and Parole* (2016-01). [https://olag.utah.gov/olag-doc/16\\_01rpt.pdf](https://olag.utah.gov/olag-doc/16_01rpt.pdf)

Work with the Legislature and the Bureau of Criminal Identification to review whether expungement eligibility should be expanded.	Implemented
Create and monitor key data elements.	Implemented
Create an executive director position and give more responsibilities to this position.	Implemented
Adopt and integrate each of the ten practice targets outlined by the National Parole Resource Center.	Implemented
Measure its impact on the criminal justice system through targeted performance measures.	Implemented
Utilize internal resources (nonlapsing funding) and federal resources before requesting state funds for an electronic file management system.	Implemented

## **Appendix C: Utah State Tax Commission's Management Plan**

Our 2016 audit recommended that the Board create a management plan and formalize it in *Administrative Rule*. This recommendation was intended for BOPP to clearly articulate the separation of roles between the Board and the Director. In our audit report, the Utah State Tax Commission's management plan was provided as an example. This plan, which is outlined in *Administrative Rule 861-1A-16*, clearly details the commission's internal control responsibilities such as reporting procedures, delegation authority, and required contact and correspondence. The relevant sections from *Administrative Rule* are included below.

### **R861. Tax Commission, Administration.**

#### **R861-1A. Administrative Procedures.**

##### **R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.**

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office:

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of

the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission;

(f) liaison with the Legislature:

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

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## Appendix D: Other States' Strategic Plans and Goals

As noted in Chapter III of this report, other state parole boards or releasing authorities use their strategic plans to set goals and monitor goal completion. Examples from Colorado, Idaho, Arizona, and Wyoming are provided here.

The strategic plan of the Colorado State Parole Board states a broad goal that captures its overall mission. This broad goal is similar to the goals in BOPP's strategic plan. However, Colorado's strategic plan goes further to include a list of specific and measurable objectives that define what success will look like. The Board sets the expectation that these objectives will be completed before the release of the next strategic plan. The strategic plan also highlights future challenges and proposed solutions.

### Colorado State Parole Board

#### Goal:

"Goal of the Colorado Board of Parole is a safer and more productive environment for ALL citizens of the State of Colorado. We endeavor to generate a cooperative and communicative atmosphere with all concerned entities including but not limited to victims, inmate population, parolees, the Department of Corrections, the Division of Parole, treatment providers and the public"

#### Objectives:

- Consistent use of statutory provisions and all applicable, relevant, and tested evidence-based tools, including the Colorado Actuarial Risk Assessment, which are specifically designed to measure the performance of the Colorado Board of Parole in accomplishing its overall mission and goal.
- Establish a baseline by which outcomes and the efficiency of the Colorado Board of Parole can be evaluated and enhanced.
- Educate Board Members in the most recent and innovative parole decision making practices and research methodologies.
- Employ innovative and enhanced motivational interviewing techniques.
- Engage, utilize, and embrace technological advances designed to make the work of the Colorado Board of Parole more [effective], efficient and productive.
- Provide training for Board members, Hearing Officers, and staff to update skill sets.

*Source: Auditor generated based on the Colorado State Board of Parole Strategic Plan.*

Idaho’s Commission of Pardons and Parole is required to annually update its strategic plan as part of its budget request. The strategic plan includes several actionable goals that are further broken out into objectives, performance measures, and benchmarks. The Idaho Division of Financial Management requires that these goals be followed up on by the Executive Director, who is given a specific list of expectations for the process. The performance measures for each goal are then reported in a separate “Performance Report” that compares targets to actuals results.



## Idaho Commission of Pardons and Parole

### Goal (1 of 4):

Review Commission processes to ensure accuracy and efficiency.

### Objectives:

- Evaluate the current system of scheduling pre-hearing interviews and parole hearings to maximize efficiency.
- Review format of reports prepared for the Commission to ensure accurate data for decision-making.
- Schedule regular staff and leadership meetings to ensure efficient problem solving and review of processes and policies.

### Performance Measures:

- Utilize uniform templates and scheduling for all hearing reports.
- Evaluate available supplemental and other case related documents with Commissioners, partners, and stakeholders.

### Benchmarks:

- Implement and regularly evaluate efficient scheduling practices for interviews, violation hearings and Commission hearings.
- Review and adapt report templates to account for institutional changes or other process changes.

*Source: Auditor generated based on Idaho Commission of Pardons and Parole’s strategic plan.*

The Arizona Board of Executive Clemency has a five-year strategic plan that outlines its performance indicators and objectives for the year in relation to its goals. Progress towards these goals is followed up on and reported in their Board's annual report, adding an additional layer of accountability to the Board's strategic plan.

### Arizona Parole of Executive Clemency



**Goal:**

Establish continuous board member training and development.

**Goal Performance Indicator:**

Number of hour-long monthly trainings on for Board (goal of 8) .

**Objectives FY2019:**

Establish an ongoing training program for the Board.

*Source: Auditor generated based on Arizona Board of Executive Clemency's strategic plan.*

The strategic plan of the Wyoming Board of Parole focuses on its primary goal of improving the Board's future performance. This is measured using three primary performance measures that focus on recidivism. The Board then details three strategies to achieve its goal of improved performance while maintaining a focus on these measures.

### Wyoming Board of Parole



**Goal:**

- To Improve performance of the Board in the future.

**Performance Measures:**

- Percentage of parole discharges compared with prison discharges.
- Parole recidivism versus prison recidivism for any crime.
- Parole recidivism versus prison recidivism for a felony.

**Strategies:**

- Validate performance measures and their use in future planning.
- Continue to work with other criminal justice stakeholders in the executive legislative and judicial branches of government to explore options to help reduce and more effectively manage Wyoming's offender population.
- Undertake additional training and continue the review of internal policies and procedures in order to ensure efficiency and effectiveness in the Board itself.

*Source: Auditor generated based on Wyoming's Board of Parole's strategic plan.*

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## **Appendix E: BOPP's Regular Reports and Measures**

Our 2016 audit recommended that the Board create and monitor key data elements. As mentioned in the previous audit, the Board obtained funding from the Legislature to hire a research analyst. BOPP has since improved many of its data reporting capabilities, and Board members receive a variety of reports to help them make more informed decisions. The Board now analyzes and compiles data to create weekly, monthly, quarterly, and annual reports that are reviewed by Board members, staff, and a variety of stakeholders.

### **Weekly:**

- Current Prison Inmate Population
- Current Parole Violator Prison Population
- Current Parole Population
- Returns to Prison for Parole Violations
- New Court Commitments to Prison
- New Court Probation Violation Commitments
- Prison Releases
- Prison Releases Versus Prison Admissions
- Upcoming Prison Releases
- Board Decisions
- Weekly Warrants Issued
- Weekly Terminations

### **Monthly:**

- Monthly Terminations of Board Jurisdiction
- Multiple Tentative Dates
- Non-Terminated Multiple Time Entries
- Individuals in Jail on Parole
- Missing Expiration Dates
- Missing Hearing Dates
- Electronic File Flag/Electronic File Conversion
- Parole, inmate, parole violator legal status and current prison aggregate
- Second Degree Felony and 30 Year Max Sentence
- Items for Discharged Individuals
- Overdue Items on Desktops
- Parole Violations without PV Hearings

### **Quarterly:**

- JRI Quarterly Earned Time Credit
- JRI Quarterly Earned Time Credit Trend
- Time Cut Reason
- PV Exceptions
- RIM Jail Sanctions

### **Annual:**

- Fiscal Year Decision and Hearing Trend by Type
- Calendar Year Decision and Hearing Trend by Type
- Fiscal Year Pardon Hearings Trends
- Calendar year Pardon Hearing Trends
- Annual Timeliness Measures
- Recidivism Rates by Type
- Parole Revocations Per Commitment
- Parole Revocation Characteristics
- Consistency of Board Decisions with Guidelines
- Reasons for Parole Warrants

*Source: Auditor generate, based on information provided by the Utah Board of Pardons and Parole.*

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## **Agency Response**

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**Carrie L. Cochran**  
*Chair*

**Melissa G. Stirba**  
*Vice Chair*



**Blake R. Hills**  
*Member*

**Greg E. Johnson**  
*Member*

**Marshall M. Thompson**  
*Member*

## STATE OF UTAH BOARD OF PARDONS AND PAROLE

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November 7, 2022

Carrie L. Cochran, Chair  
Mike Haddon, Director  
Utah Board of Pardons and Parole  
448 East Winchester, Suite #300  
Murray, Utah 84107

Kade Minchey, Legislative Auditor General  
Office of the Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, Utah 84114-5315

Dear Mr. Minchey,

The Utah Board of Pardons and Parole (Board) would like to express our appreciation to you and your team for the important work completed in the audit, "A Performance Audit of the Board of Pardons and Parole." It was a pleasure working with your team, who demonstrated a strong commitment to the project, and who were always professional and responsive as their work was done.

As you will note in our responses, the Board agrees with the recommendations made, and initial work is already underway in several areas identified. Historically and moving forward, the Board maintains a firm commitment to public safety and the well-being of communities across Utah. We are confident our agency will be even stronger and our operations will be even more transparent to the public and policy makers as we move forward with these recommendations.

## Summary

The Board of Pardons and Parole has made tremendous strides in improving operations and openness thanks, in part, to an audit conducted by the Legislative Auditor and released in 2016. Prior to that time, the Board conducted its work using thousands of individual paper files, with little plan or funding for moving to an electronic records system. At that time, the Board didn't have data specific to our work that would allow for future planning or to identify positive and negative trends associated with our work. The Board Chair was required to shoulder a significant amount of administrative work while, at the same time, carrying the full-time responsibilities associated with a Board Member.

Looking forward only six years, to 2022, changes in the Board's operations and processes are notable. An electronic records system is on the verge of replacing the paper processes used historically, and that system has been built from the ground up while utilizing and integrating many existing resources available through agency partners. Releases of various modules in the new electronic system have already changed our day-to-day work, and data is becoming more and more available that allows our agency to not only see new patterns and trends, but also to respond to them in a timely manner. During the course of this work, over a million pages have been scanned, uploaded, and categorized, allowing electronic access to information that previously required accessing physical files contained within a large file room. Today, all Board hearings are streamed live to improve both accessibility and transparency. Decisions made by the Board can be found online in real time, and the schedule for future hearings can also be found online with real time updates. However, as this audit notes, there remain areas where the Board can and will further improve our operations.

### ***Chapter II The Board's Paroling Philosophy is Not Clearly Understood or Documented***

***Recommendation 1*** *We recommend the Board of Pardons and Parole update its policy to ensure it encompasses all parts of its guiding philosophy, including public safety, and make the policy publicly available.*

### ***Response***

The Board supports the recommendation to update its policy with its guiding philosophy and will work to ensure this is more fully realized. Although current Board policy expressly identifies public safety as a "priority objective" in decision making, the Board looks forward to further highlighting this for the public and policy makers. Additionally, the Board is currently working to update its policy, most of which has been out of date. Not only are we meeting weekly and working on policy updates, but we are also establishing processes to ensure policy is regularly reviewed and updated. As an agency, the Board has already started work related specifically to this recommendation.

***Recommendation 2*** *We recommend the Legislature consider amending statute to include language that prioritizes public safety.*

***Response***

The Board supports this recommendation. As noted in response to the first recommendation in this chapter, the Board prioritizes public safety and agrees that making this clear to the public and policy makers is essential. Our agency stands ready to work with the Legislature on this item when needed.

***Recommendation 3*** *We recommend the Board of Pardons and Parole revise the rationale sheet and ensure that it is clear and direct, providing meaningful information to inmates.*

***Response***

The Board fully supports this recommendation and is making strides to update and improve its rationale sheet. The Board is building an electronic rationale sheet as part of the Voting & Decision Module that will be automatically associated with the decision in the new computer system. This new rationale sheet will allow for the selection of standard rationale that will populate and can be customized with specific direction or information for the individual. The rationale will then be included as part of the official Board order. The new rationale sheet is in the process of being programmed, and it is anticipated it will be released in 2023.

***Recommendation 4*** *We recommend the Board of Pardons and Parole analyze parole decisions for consistency.*

***Response***

The Board appreciates this recommendation and is working towards creating capacity to accomplish it. With the creation of the electronic system, the Board is now able to begin analyzing decision outcomes for alignment with the sentencing guidelines. Additionally, as the final electronic system module is released and data becomes available, we will be able to more fully analyze decision consistency across time and by factors. The Board looks forward to continuing to make progress and improvement in this area.

***Recommendation 5*** *We recommend the Board of Pardons and Parole amend the structured decision-making tool as further evidence-based information becomes available.*

### ***Response***

The Board supports this recommendation and looks forward to incorporating further evidence-based practices as they become available. As a result of the previous audit, the Board implemented a structured decision making framework. This structured decision making framework has been built into and integrated with the Board's new electronic decision making process and acts as a guide to decision makers. Additionally, the Board has received training from the National Institute of Corrections and the National Parole Resource Center on the implementation of the structured decision making framework. The Board looks forward to incorporating new advances in evidence-based practices as they are identified and become established in the field.

### ***Chapter III The Board Has Made Significant Improvements Since Previous Audit but Operational Opportunities Still Exist***

***Recommendation 1*** *We recommend the Board of Pardons and Parole update its policies and procedures to include up-to-date responsibilities for current positions and revise as necessary.*

### ***Response***

The Board accepts and appreciates this recommendation and is working to update its policies and procedures. The Board is currently in the process of updating all of its policies and procedures. This includes revising policy to reflect individual positions, as well as the responsibilities of those positions in our agency. The current policy noted in this audit doesn't include several current positions at the Board, and the responsibilities for many positions do not reflect the current responsibilities. The Board has initiated work on accomplishing this recommendation and is establishing a process for timely review of each policy.

***Recommendation 2*** *We recommend that the Board of Pardons and Parole should create a management plan that outlines relationships between the oversight body, management, and personnel and formalize it in Administrative Rule.*

### ***Response***

Work on this recommendation is already underway. The Board has initiated a review of the management plan included in Administrative Rule for the Utah Tax Commission. With this review, the Board will identify a management plan structure that best suits our organization and operations. Once complete, the plan will provide a clear outline of the relationship between the Board Chair and the Board Director of Administrative Services. When the management plan is finalized, the Board will add it to our Administrative Rules to ensure it is formalized and transparent to the public.

***Recommendation 3*** We recommend that the Board of Pardons and Parole revise its strategic plan to include challenges the Board is facing, key data elements, and specific performance goals and strategies to reach those goals and continue to make it publicly available.

***Response***

As noted within this audit, the Board's current strategic plan requires updating. Leadership and staff of the Board will follow the Governor's Office of Planning and Budget's "Guide to Strategic Planning" which was updated in July 2022. Following this guide will help ensure the Board is following a similar planning process in use by other Executive branch agencies. Once complete, the Board will work to regularly review and update the strategic plan and make it available on the Board's public website. The Board will ensure the plan reflects current and ongoing challenges and goals, includes specific strategies to meet those goals, with ties to performance metrics that allow the Board and the public to see the impact those strategies are having on the identified goals.

***Recommendation 4*** We recommend that the Board of Pardons and Parole identify its most important targeted performance measures and link them to specific goals.

***Response***

The Board fully supports this recommendation and has been working extensively since the last audit to improve both its capacity to collect and analyze data and the outcomes and measures reported. The Board appreciates the support of the Legislature in funding the new electronic system, and we have used data from this new system to measure performance in such areas as: recidivism measures, parole violation returns, reasons for warrants, and alignment between board outcomes and sentencing guidelines. Additionally, the Board now utilizes these measures to determine progress, to identify areas of needed improvement, and to inform policy discussions. This would not have been possible without the transition to an electronic system funded by the Legislature. The Board will work to further expand in this area by selecting the most relevant performance measures and linking them to specific goals, such as those in the strategic plan.

***Recommendation 5*** We recommend that the Board of Pardons and Parole continue to work with the Department of Technology Services to implement its O-Track Electronic File Management System and execute additional modules as necessary.

***Response***

This is an essential recommendation for the Board. The Board has completed eleven of the twelve modules for the transition to electronic records in O-Track. The final work to move our agency away from paper files and to electronic records is expected to complete in 2023. Once that work is completed and released into production, the Board will be able to conduct its general

processes electronically and provide additional data on key performance measures and outcomes. After this is completed, similar to other agencies with electronic systems, the Board will continue to update and improve its electronic system and other parts of its system, such as pardons, with additional modules and projects. The transition to electronic records has been a monumental project that has allowed the Board to make great strides in multiple areas, such as measuring alignment with sentencing guidelines, measuring recidivism rates, improving consistency among decision forms, implementing a structured decision making framework, and making a data dashboard available on the public website. The Board is highly appreciative of the legislative support provided in this area and looks forward to further enhancing our electronic records capacity in the future.

#### ***Chapter IV The Public Still Lacks Key Data Elements and Information on Board's Operations***

***Recommendation 1*** *We recommend the Board of Pardons and Parole publicly provide metrics on its website, including but not limited to the following: recidivism measures, time under Board jurisdiction, prison releases by category, measure(s) of a successful parole such as number of parole revocations, consistency of Board decisions with guidelines, and aggregate reasons for departure from the sentencing guidelines.*

#### ***Response***

The Board supports this recommendation, and is working to provide additional data publicly on its website as it becomes available through the new electronic system. Currently, the Board provides multiple points of information through a public data dashboard that is updated weekly on the website. We will also work toward providing this additional information publicly as outlined in the recommendation. One area of this recommendation that may require some time is the reason for departure from the sentencing guidelines. This is information that will be captured in the new electronic rationale sheet that is scheduled for release in 2023. Due to the way databases are structured, it will take some time for sufficient data to accrue in the database before it can be analyzed. However, the Board is designing and creating a system that will allow for this type of reporting in the near future. We are committed to providing quality data to the public, and the work now being done will continue as the Board focuses on accomplishing this recommendation.

***Recommendation 2*** *We recommend the Board of Pardons and Parole continue to make its strategic plan publicly available and update it to include what was discussed in Chapter III of this report.*

#### ***Response***

*Please see the Board's response to Recommendation 3 in Chapter III of this audit report.*

***Chapter V The Board of Pardons and Parole Should Determine If Its Processes Follow Due Process and Probable Cause Standards***

***Recommendation 1*** *We recommend the Board of Pardons and Parole evaluate its existing processes to ensure best practices are incorporated and in compliance with probable cause and due process standards.*

***Response***

The Board is committed to regular and ongoing review of its processes, including the potential impact of current and new case law.

***Recommendation 2*** *We recommend the Board of Pardons and Parole, after a thorough review of its policies and practices, bring any necessary statutory changes to the Legislature for consideration.*

***Response***

As the Board conducts its ongoing reviews, any items surfacing that may need statutory adjustment will be brought to the Legislature.

***Recommendation 3*** *We recommend the Board of Pardons and Parole evaluate its regulatory framework outlined in Administrative Rule to ensure consistency with current and future statutory provisions.*

***Response***

The Board continually reviews and updates its Administrative Rules. As adjustments are needed, the Board will engage the proper Administrative Rules processes. The Board also works closely with the Attorney General's Office to ensure compliance with all laws and requirements and will continue to do so.

Again, the Board of Pardons and Parole would like to thank the staff members from the Office of the Legislative Auditor General for their dedicated work and for the recommendations provided.

Sincerely,



Carrie L. Cochran, Chair  
Utah Board of Pardons and Parole



Mike Haddon, Director  
Utah Board of Pardons and Parole