STATE OF NEW HAMPSHIRE
ADULT PAROLE BOARD

PERFORMANCE AUDIT REPORT
APRIL 2019

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To The Fiscal Committee Of The General Court:

We conducted a performance audit of the New Hampshire Adult Parole Board (Board) to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. The evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The purpose of the audit was to determine whether the Board's operations were efficient and effective during State fiscal years 2017 and 2018.

Office of Legislative Budget Assistant

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April 2019

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ABBREVIATIONS AND GLOSSARY OF TERMS

ACA	American Correctional Association
Board	New Hampshire Adult Parole Board
CC/CM	Correctional Counselor/Case Manager
CORIS	The Department of Corrections' offender management system.
DOC	Department Of Corrections
DOJ	Department Of Justice
FileHold	The Department of Corrections' document management system.
GAO	U.S. Government Accountability Office
Manual	New Hampshire Drafting And Procedure Manual For Administrative Rules
Maximum	Maximum Sentence Date – the latest date at which the inmate must be released from incarceration.
Memorandum	Memorandum on New Hampshire's *Right-to-Know Law*, RSA 91-A
Minimum	Minimum Parole Date – the earliest an inmate can be released from incarceration.
ORAS	Ohio Risk Assessment System
ORAS-PIT	Ohio Risk Assessment System – Prison Intake Tool which was generally administered to inmates upon entry into the prison system. The assessment was primarily used to determine an inmate's programming needs.
ORAS-RT	Ohio Risk Assessment System – Re-entry Tool which was generally administered to inmates prior to their parole hearing. The assessment was primarily used to determine recidivism risk and used to determine an inmate's supervision level.
PPO	Probation/Parole Officer
Right-to-Know Law	RSA 91-A: Access To Governmental Records And Meetings
SFY	State Fiscal Year

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STATE OF NEW HAMPSHIRE
ADULT PAROLE BOARD

EXECUTIVE SUMMARY

Each year, the New Hampshire Adult Parole Board (Board) conducts almost 2,000 hearings to determine whether incarcerated inmates have earned the privilege of parole, or whether those released violated their parole conditions and should be re-incarcerated. As an independent State agency, holding these two types of hearings was the Board's primary focus and supporting these activities, which was considered its core function, took up the majority of the Board's attention and utilized the most staff time and efforts. While State law entrusted the Board with the responsibility of paroling inmates and recommitting parole violators, this was only one aspect of the Board's statutory duties. State law also required it to have legal custody of all parolees until their discharge or until they were recommitted to prison, as well as ensure it had a process for conducting its business. In fact, statute emphasized the need for the parole system's policies, procedures, and actions to focus on protecting the public from criminal acts committed by parolees.

We found the Board did not administer itself as a State agency nor did Board members see themselves in this role. With a small staff focused on preparing for and running hearings, little time was dedicated to ensuring the Board was running efficiently and effectively. Board members and staff lacked formalized processes, rules, policies, and procedures to guide their activities and were unaware of responsibilities to implement an adequate management control environment or the need to comply with laws outside of its own statute. The lack of knowledge of basic administrative requirements has culminated over several decades, undermining the Board's ability to function in an efficient manner. Our 1992 *Prison Expansion Performance Audit* described the Board as:

> an office staffed by personnel who are overwhelmed and unable to effectively manage their rapidly increasing workload.… However, at the same time Board operations show few signs of modern technology and management. File cabinets and paper files abound. There were no written policies and procedures to guide staff in their daily routines.

In 2018, this situation has not improved. The Board's office still contained numerous file cabinets and carts overflowing with paper files, policies and procedures still did not exist for the vast majority of the Board's daily activities, and staff were overwhelmed with the amount of documents flowing in and out of the Board's office. Few of the Board's processes were automated as most activities, including collating inmate records for Board review, were conducted manually and were labor intensive. While digitizing inmate records helped alleviate some pressures as the majority of documents could be retrieved electronically, members still reviewed paper packets containing dozens of pages for each inmate.

The lack of standardized policies and procedures, as well as limited access to some inmate information, resulted in reliance on institutional knowledge, practices, and interpretations which shifted as new Board members were appointed. As a result, we found inconsistent application of criteria among Board members, making it difficult to determine the Board's effectiveness. In addition, there was no system to track or measure whether Board activities contributed to its overall goal, and the Board did not review or analyze any of the data it did receive to determine whether

parole decisions, and criteria used to make these decisions, were effective in protecting public safety. According to Department of Corrections (DOC) data, the Board granted parole in approximately 84 percent of parole release hearings conducted in both State fiscal years (SFY) 2017 and 2018. However, our sample found 97 percent of inmates with minimum parole dates in SFYs 2017 and 2018, including those who were initially denied, were eventually granted parole after subsequent hearings. Additionally, the DOC's latest recidivism study, conducted on inmates released from prison during the 2014 calendar year, showed 47 percent of those released on parole returned to prison within 36 months, 14 percent of whom returned to prison for committing a new crime. A national study compiling data from the Bureau of Justice Statistics ranked New Hampshire the ninth highest for parolees returning to prison. The study showed in 2014, 43 percent of those entering prison in New Hampshire were returning due to violations of their parole, compared to about 25 percent nationally. However, these types of data were not used to establish or adjust parole release criteria despite a consultant's recommendations in 2013 and 2015 to collect data and establish weights for each criteria used in making parole decisions.

While we did not conduct a formal staffing analysis, it was evident from observing program operations and the steady workload, the Board and staff will have a difficult time addressing the audit's recommendations in a timely manner without additional resources including support in rulemaking, policy development, and program evaluation. These circumstances are not unique to the Board – in the past, the LBA has audited other boards and commissions with small staff that exhibited similar patterns. However, the consequences of the Board's actions have a significant impact and may directly affect public safety. The recommendations in this report, if implemented properly and timely, are aimed at helping the Board increase the likelihood it will meet its goals and statutory obligations, and enable it to review its effectiveness.

RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	19	No	The New Hampshire Adult Parole Board (Board) should develop a process to ensure information used to make parole decisions is accurate and complete. The Board should work with the Department of Corrections (DOC) to ensure all relevant information is updated before an inmate's parole hearing.	Board: Concur DOC: Concur
2	23	No	The Board and DOC should continue to work on Board access to substance abuse and mental health information necessary for making parole decisions.	Board: Concur DOC: Concur
3	26	No	The Board should modify and consistently implement weighted decision-making guidelines and collaborate with the DOC to develop a process to ensure information given to members is accurate and complete. The Board should develop formal training to incorporate established guidelines, adopt policies and procedures to ensure guidelines are reviewed, and establish processes to begin data collection and analysis.	Board: Concur DOC: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
4	29	No	The Board should develop a process to ensure parolee records are reviewed every 36 months as required by statute, including policies and procedures to address how the review should be conducted, frequency of the review, and how the Board will receive information. The Board and DOC should review criteria for when to bring parolees back before the Board, ensure recidivism risk assessments are updated, and ensure issues identified by Chief Probation/Parole Officers (PPO) are corrected timely.	Board: Concur In Part DOC: Concur
5	35	No	The Board should develop rules, policies, and procedures related to excessive costs, periodic medical reports, review hearings, and medical parole criteria. It should also remedy conflict between statute and rules regarding authority to revoke parole.	Board: Concur
6	39	No	The Board should apply a similar level of scrutiny for inmates recommended for medical parole as it does for those requesting parole at their minimum. The Board should consider whether the record adequately reflects the Board's assessment of the reasonable probability an inmate will not violate the law while on medical parole.	Board: Concur
7	41	No	The Board should establish a process to track medical parolees, review those reaching their minimum, and address those violating parole conditions. The Board and DOC should work to develop procedures to ensure all entities with legal responsibility over medical parolees have the necessary information to enforce all parole conditions, and ensure the Board receives periodic medical report findings.	Board: Concur DOC: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
8	44	No	The Board should impose special conditions of medical parole using information from DOC personnel and stakeholders. It should also adopt and consistently apply house arrest conditions, ensure parole certificates reflect conditions stipulated at the hearing, and establish policies and procedures to modify parole conditions when necessary.	Board: Concur
9	49	Yes	The Board and DOC should seek clarification from the Department of Justice (DOJ) on whether sanctions other than a seven-day community based or residential program are permitted. If alternative sanctions are not permitted, the Board and DOC should petition the Legislature to allow for their use. Once clarified, the Board and DOC should collaborate to adopt a graduated sanction schedule, ensure the use of alternative sanctions is documented, and ensure all sanctions used are presented to the Board when requesting an arrest warrant.	Board: Concur DOC: Concur In Part
10	52	No	The Board should ensure revocation sanctions are compliant with statutory guidelines by allowing only cases with circumstances permitted by statute to be given sanctions shorter than 90 days.	Board: Concur
11	53	Yes	The Board should ensure presence of members serving in the capacity of attorney of the Board is documented during revocation hearings and in the hearing results. The Board should seek clarification from the Legislature regarding the role of the attorney of the Board during revocation hearings, determine whether the attorney should be in active status, and consider skills or experience the attorney of the Board should possess.	Board: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
12	55	Yes	The Board and DOC should seek an amendment to allow it more flexibility in re-engaging parolees in their parole plan. If a statutory amendment is not successful, the DOC should establish the required programming, and the Board should ensure those not participating in the program are brought for a hearing.	Board: Concur DOC: Concur In Part
13	57	No	The Board should develop a process for evaluating petitions for reduction of maximum sentences and ensure criteria are formally adopted in rules and consistently applied. As part of this process, the Board should work with the DOC to determine whether current policies for recommending parolees for a reduction aligns with the Board's criteria and expectations. The Board should also consult with its DOJ representative to determine whether hearings should be held to evaluate these petitions. If appropriate, the Board should determine who should be present for hearings and the number of members required to take action on a petition. The Board should also ensure petitions are signed by the members.	Board: Concur DOC: Concur
14	60	No	The Board should establish a process to verify petitions for reduction of maximum sentences for accurate and complete information. The DOC should ensure petitions are properly reviewed for accuracy and completeness.	Board: Concur DOC: Concur
15	63	No	The Board should develop and adopt a policy and procedure manual for all administrative operations by establishing clear reporting relationships, delegating duties and responsibilities, and monitoring practices and periodically modifying procedures as necessary. The Board should collaborate with the DOC to develop written policies outlining expectations, responsibilities, and the relationship between the two entities.	Board: Concur DOC: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
16	67	No	The Board should develop and adopt a policy and procedure manual for Board practices by formalizing an orientation and training program, establishing and adopting operating procedures for rotating Board members on hearing panels. It should also document designation of an Acting Chair and presiding officer, adopt a code of conduct, and seek legal counsel to confirm proper acceptance of evidence for certain violations. The Board and DOC should review DOC policies and current Board practices to align, develop, and adopt written policies and procedures pertinent to related functions.	Board: Concur In Part DOC: Concur
17	71	No	The Board, with the help of its DOJ representative, should review statutory responsibilities to ensure rules are promulgated for all activities under its authority and requirements imposed on persons outside of its own personnel. The Board should also adopt all forms it requires inmates and DOC personnel to use when providing information in its rules.	Board: Concur
18	76	No	The Board should comply with *Right-to-Know Law* requirements when conducting Board business, enter into non-public session when discussing sensitive and confidential matters, and limit discussions to legal matters during consultation with legal counsel. The Board should formalize *Right-to-Know Law* training by incorporating DOJ guidance and exploring available DOJ training for Board members and key Board staff.	Board: Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
19	79	No	The Board should clarify with the DOJ whether parole release and revocation hearings should be conducted in public or non-public session. Regardless of the final determination, the Board should develop formal procedures to ensure hearings are compliant with *Right-to-Know Law* requirements. The Board should also review its rules regarding disclosure of member votes and providing verbatim recordings upon request, and remedy conflicts with statute.	Board: Concur In Part
20	84	Yes	The Board should establish a policy to address disclosure of potential conflicts of interest and how they should be handled. The Board should also ensure all members file timely statements of financial interests. The Legislature may wish to consider clarifying RSA 15-A:6 regarding whether failure to file annual financial disclosures should prohibit public officials from serving on their appointed capacity.	Board: Concur
21	86		The Board should track and document when it provides notices of hearing, ensure all statutory language is incorporated into the notice, and ensure parolees receive an updated notice for rescheduled hearings.	Board: Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
22	88	Yes	The Board and DOJ should determine whether notice requirements apply to reconsideration hearings. The Board should adopt policies, develop corresponding procedures, and adopt rules outlining the process for conducting reconsideration hearings. If the Board determines timeframes in law would not allow it to conduct reconsideration hearings for inmates committing major disciplinary infractions within 15 days of release, it may want to consider seeking statutory amendments to allow more flexibility.	Board: Concur
23	90	No	The Board should establish: a process for submitting supervision fee waiver requests; guidelines outlining instances which may warrant a waiver; thresholds for which the Executive Assistant is granted authority to approve waiver requests; a process for periodic Board review of waiver requests approved on its behalf; and a process for Board review of waiver requests not meeting guidelines. The DOC should establish rules for supervision fee payment and collection as required by statute.	Board: Concur DOC: Concur
24	91	No	The Board should establish record retention policies as required by State law and resolve the conflict between its rule requiring recordings be destroyed after one year and State law requiring records be retained for at least four years. The Board should ensure meeting minutes are produced timely, adequate storage is available to retain audio recordings, Board files are appropriately retained, staff are trained on records retention policies, and parolee files are periodically reviewed for accuracy and completeness.	Board: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
25	94	No	The Board should develop a process to record individual member votes which preserves this information from public disclosure but allows the record to be retrieved if ordered by a court.	Board: Concur
26	96	No	The Board should begin data collection to eventually support a performance measurement system by identifying data necessary to evaluate whether its parole criteria are appropriate, what data are currently available, and what additional data may be needed. Once it identifies these data elements, the Board should work with the DOC to determine how data can be collected and how data reporting can be automated.	Board: Concur DOC: Concur

BACKGROUND

In 1983, the Legislature created the Department of Corrections (DOC), in part, to maintain and administer State correctional facilities and programs, and to supervise inmates placed on probation or released on parole. In the same year, the Legislature established the New Hampshire Adult Parole Board (Board) consisting of five members, appointed by the Governor and Council to no more than two consecutive five-year terms. Since 1983, the Board's membership has steadily been increased to nine members. The Board was administratively attached to the DOC, which provided it with budgeting, recordkeeping, and clerical assistance. However, the DOC had no administrative authority over the Board, its personnel, or its duties.

Paroling Entities Nationally

Nationally, states generally structured sentencing regulations and policies based on one of two central models: indeterminate and determinate. Under an indeterminate sentencing structure, like that used in New Hampshire, a judge, at sentencing, imposed a term of incarceration within a range of years, a minimum parole date (minimum) and a maximum sentence date (maximum), for the offender to serve. Parole release was left to the discretion of the state's parole entity, usually with adjustments or allowances for reductions based on earned credit. For example, most states with an indeterminate sentence structure stipulated offenders were eligible for release upon the minimum imposed by the judge, but the offender could be incarcerated for the entirety of their sentence, their maximum, if the parole entity denied release to supervision.

Determinate sentencing models shifted the discretion for release from parole entities by transferring the authority to the courts to impose a set term of imprisonment, with adjustments or allowances for earned credit reductions. The provisions for good-time credit usually remained in place for states with determinate sentencing to encourage program enrollment and compliance with correctional rules. For example, some states' laws may require the offender be incarcerated for two-thirds of the sentence and one-third to be served under supervision, or other states may allow up to a specified percentage reduction in the sentence for good-time credit earned without additional discretionary decision making.

Over the past 50 years, national research has shifted between favoring determinate and indeterminate sentencing structures, resulting in corresponding trends across states. Starting in the late 1970s and continuing into the 1980s, national reform increased support for determinate sentencing over indeterminate sentencing in order to facilitate fairness, consistency, and transparency in the sanctioning of criminal behavior. Criticisms of discretionary parole continued into the 1990s resulting in upwards of twenty states either abolishing their parole entities or paring back the scope of their jurisdiction. Currently, even states with a largely determinate sentencing structure utilized some discretionary review for a percentage of the offender population, either for offenders who were incarcerated prior to the effective date of the changes or for offenders who committed certain crimes such as nonviolent offenses.

In 2017, *The American Law Institute* published model penal codes outlining a statutory framework encouraging modified determinate sentencing structures. Supporting research cited states with

determinate sentencing structures had comparative success in policy implementation, sentence uniformity, procedural fairness, transparency, improved information systems, and correctional resource management over those states with discretionary parole entities. Determinate sentencing structures also: 1) emphasized the importance of post-release supervision; 2) contended planning for prison programming and post-release services were more easily facilitated when release dates were calculated with better accuracy; and 3) permitted judicial modification of prison sentences for aged or infirm inmates, or when other compelling reasons existed to justify a modification in the sentence. Of the ten northeast states we contacted, at least three states, including Delaware, Maine, and New York, utilized determinate sentencing structures for a majority of its offenders.

New Hampshire Parole Board

New Hampshire used an indeterminate sentencing structure. In creating the Board, the Legislature established a statewide system to supervise and rehabilitate inmates without continued incarceration, and to aid the transition from prison back to society. The Legislature also emphasized the need to protect the public from criminal acts perpetrated by parolees. To achieve this, it authorized the Board to parole inmates from State prisons, and recommit those who violated the conditions of their parole. While on parole, the Board had legal custody over inmates until they were discharged or recommitted to prison. DOC Probation/Parole Officers (PPO) were responsible for supervising parolees.

State law required the Board to hold at least 24 parole hearings annually, with hearings held by a three-member hearing panel. In practice, the Board generally conducted four days of parole release and three days of parole revocation hearings monthly. During State fiscal years (SFY) 2017 and 2018, the Parole Board held 131 days of hearings, consisting of over 3,830 individual hearings including parole release, revocation, reconsideration, and review hearings. The Board also handled other items such as signing warrant requests and reviewing petitions for the reduction of a parolee's maximum sentence. Table 1 shows the number of hearings during these two fiscal years.

Table 1

Parole Hearings,[1]
SFYs 2017 And 2018

	2017	2018
Parole Release[2]	1,216	1,158
Parole Revocation	616	676
Other Hearings[3]	60	110
Total	**1,892**	**1,944**

Notes:
[1] Represents the number of hearings, not inmates. An inmate may appear for multiple hearings during their incarceration.
[2] Some release hearings may not result in a release to the community as an inmate may be paroled to a consecutive sentence.
[3] Other hearings included review hearings and reconsideration hearings.

Source: LBA analysis of unaudited Board information.

Parole Release

State law stipulated an inmate was eligible for parole at the expiration of their minimum, minus any pre-sentencing confinement credits, plus the portion of the disciplinary period not reduced by credits for good conduct. The Board could order the inmate to be released on parole if, after a hearing, it determined there was a reasonable probability the inmate would not violate any laws and would remain a good citizen while on parole. Inmates who had not been previously approved for parole, or had violated parole and been recommitted to prison for more than one year, must receive a parole hearing at least nine months before their maximum.

Generally, Board rules required inmates receive a parole release hearing during the 60-day period prior to their minimum. Parole release hearings were held at the New Hampshire State Prison for Men in Concord by a three-member panel, at which the inmate had an opportunity to address the Board and offer evidence of their rehabilitation. Inmates held at the Northern Correctional Facility in Berlin appeared for hearings via video, as did female inmates until May 2018. In June 2018, the Board began conducting one parole release hearing per month at the newly built New Hampshire Correctional Facility for Women in Concord. Generally, the Board heard 25 to 30 inmates per day. Inmates may be represented by an attorney and were permitted to have family members, employers, or other witnesses present to discuss their case with the hearing panel. Victims and their families were also permitted to speak at the hearing through coordination with the DOC Victim Services Bureau.

After the inmate, witnesses, and Board members concluded their questioning and comments, Board members were required to determine whether to grant or deny parole based on several factors including: the inmate's personality, maturity, and sense of responsibility; adequacy of the inmate's parole plan; history of illegal drugs or excessive alcohol use; criminal history and seriousness of the offense; degree of remorse or empathy for the victim; conduct on prior parole and while in prison; and attitude and conduct during the parole hearing. The Board was also required to consider evaluations and recommendations from the DOC, courts, and social service or mental health agencies in determining the inmate's probability of success while on parole. Once approved for parole, if an inmate committed a disciplinary infraction prior to release, the Board was required to hold a reconsideration hearing to determine its effect on the inmate's release date.

The Board could deny parole if, in the judgment of the majority of the hearing panel: the inmate would not conform to the conditions of parole or State laws; continued treatment or training would substantially improve the inmate's capacity to lead a law-abiding life in the future; adverse public concern or notoriety would seriously hinder the inmate's transition to the community; the inmate had outstanding charges, detainers, disciplinary issues, or security issues; or the inmate did not have an adequate parole plan. If denied parole, the Board was required to inform the inmate of the requirements that must be completed to receive another parole hearing.

Medical Parole

The Board was authorized, by a majority vote of the hearing panel members, to grant medical parole if an inmate had a terminal, debilitating, incapacitating, or incurable medical condition; the cost of medical care, treatment, and resources would be excessive; and there was a reasonable probability the inmate would not violate the law and would conduct himself as a good citizen.

While on medical parole, the Board was required to order the inmate submit to periodic medical examinations. If the inmate no longer had the condition which qualified them for medical parole, the Board must revoke medical parole and the inmate must be returned to prison. Inmates sentenced to life in prison without parole or sentenced to death were not eligible for medical parole.

Parole Revocation

Parolees violating their parole conditions or any State law could be immediately arrested and detained by a PPO without a warrant from the Board if the PPO had reason to believe the parolee committed a new criminal offense or conducted themselves as a menace to society, or if there was probable cause to believe the parolee would abscond or commit a new crime if not immediately arrested. If the actions did not meet the criteria for immediate arrest, PPOs were required to request an arrest warrant from the Board. The PPO was required to submit a report to the Board within 30 days of learning of a parolee who was arrested for a felony or misdemeanor offense; was convicted of any felony, misdemeanor, or other offense, with the exception of minor traffic offenses; or absconded from supervision for 30 days or more.

The PPO could place a parolee in an intermediate sanction program for up to seven days instead of bringing them before the Board for a revocation hearing, if the parolee agreed. DOC policy required the PPO to report or request Board action to seek a warrant and revocation hearing if there was a risk to public safety; when alternatives failed and less restrictive sanctions were not proportionate to the misconduct; or as ordered by the Board. The Chief PPO, or supervisor, must approve a PPO's recommendation to seek a warrant from the Board. If the Board issued a warrant, parolees must be brought before a three-member panel for a parole revocation hearing within 45 days of being arrested by the PPO. State law required an attorney be in attendance on behalf of the Board.

Parolees, the PPO, and the parolee's attorney, if applicable, were present at the revocation hearing and were afforded the opportunity to present evidence to the hearing panel. Victims were generally not present at parole revocation hearings. If at the hearing the Board found the parolee violated their parole conditions or State law, and in its judgment should be returned to the custody of the DOC, the Board must revoke parole. In determining whether to revoke parole, Board rules required it consider the recommendations of the PPO and community treatment professionals; the length of time on parole prior to the violation; the parolee's overall performance on parole before the violation; any intermediate sanctions attempted by the PPO prior to arrest; pending criminal charges or outstanding warrants against the parolee; length of time left on the parolee's sentence; the parolee's performance during prior periods of community supervision; and any other factors it wished to consider.

Sanctions

State law required those whose parole had been revoked to serve 90 days in prison before being placed back on parole. They must also be provided access to evidence-based programming aimed at re-engaging them in their parole plan while recommitted to prison. Parolees may be recommitted for longer periods if the parolee had previously violated parole, parole was for a violent crime, the violation is related to the offense for which the inmate was initially sentenced or was related to

their offending pattern, or the conduct constituted a serious or criminal act. Those on parole for a sexual offense and displaying specific risk factors may also be recommitted to a longer period.

The Board could impose a term of less than 90 days if there were no past parole violations; the parolee was not on parole for an offense against a child, a sexual offense, or a violent crime; the parole violation was not substantially related to the offense for which the inmate was initially sentenced or related to their offending pattern; and the Board determined a lesser period of recommitment would aid in the parolee's rehabilitation. To be sanctioned to a term shorter than 90 days, the parolee must meet all requirements.

Reduction Of Maximum Sentence While On Parole

State law allowed the Board to grant a parolee a reduction of their maximum sentence equal to one-third of the time spent on parole, after meeting certain criteria. PPOs must submit a petition to the Board for review. Unlike parole release and revocations, the Board did not hold a hearing to consider these petitions. Additionally, neither the offender, the PPO, nor the parolee's attorney were present while the Board considered the petition. Occasionally, the Victim Services Bureau provided input to the Board. According to Board data, there were 88 requests for reduction of maximum in SFY 2017 and 63 requests in SFY 2018.

When considering a petition for a reduction of maximum sentence, the Board must consider the conduct of the parolee while under supervision, seriousness of the offense, amount of restitution owed, and any information provided by the victim. DOC policy outlined the process a PPO must follow to submit a petition; however, the Board's process to review these petitions was not specified in statute, administrative rule, or policies.

Victim Notification

State law addressing the rights of crime victims provided direct victims, or their immediate families if the victim was deceased, the right to be notified when the offender was released from prison, permanently transferred to another state, or escaped. It also required victims to be notified of the date of the offender's parole hearing and provided victims the right to address or submit a written statement regarding the defendant's release to the Board, and to be notified of the Board's decision. Statute required victims request notification through the victim advocate, which was coordinated through the Victim Services Bureau.

At least 15 days before the hearing, State law required the Board post the name and birthdate of the person seeking parole, as well as the date, time, and location of the parole hearing on the DOC's website, and provide this information to the DOC, which was responsible for informing the victim or their family. Approximately one month before a scheduled parole release or revocation hearing, Board staff transmitted a list of inmates scheduled to appear before the Board to the Victims Services Bureau.

If a victim was registered with the Victims Services Bureau, staff contacted the victim or their family to help prepare a victim impact statement. Victim impact statements were presented orally to the Board during the inmate's parole hearing. In the past, the Board accepted written statements;

however, this practice changed in 2015 and the Board no longer accepted written victim impact statements. The Victim Services Bureau reported being notified of all inmates appearing for parole release hearings during the audit period, and in turn, notified all relevant victims.

Parole Board Members And Staffing

Statute established a Board consisting of nine members serving no more than two consecutive five-year terms. Board members could be held over until a successor was appointed. As of January 2019, the Board had eight members, with one vacant position as one member's term expired at the end of June 2018. Two members were newly appointed in May and June 2018 to vacant positions and, at the end of the audit period, had served for two months or less. Board members were paid $100 per day plus mileage while engaged in parole hearings and administrative meetings.

The Board had an Executive Assistant, appointed by the members, who was aided by three full-time and one part-time staff, two-and-a-half of which were clerical positions. In addition to responsibility for overseeing daily operations, budgeting, payroll, staff management, media inquiries, completing due process paperwork with parole violators, and other tasks, the Executive Assistant was the critical juncture between the DOC Division of Field Services and the Board, and served as the main point of contact for PPOs. Paperwork, including PPO requests for arrest warrants, parole violation reports, and inmate requests and parole questions were handled by the Executive Assistant before being transmitted to the Board, if necessary.

Staff were responsible for providing administrative support to the Board including: tracking inmates approaching their minimum, scheduling parole and revocation hearings, compiling documents for parole and release hearings, completing hearing notification requirements, completing parole certificates, maintaining parolee files and records, tracking out-of-State parole plans, scheduling intake exams for inmates entering residential treatment programs once released from prison, and other duties associated with preparing parole violators for a revocation hearing and returning them to prison.

During SFYs 2017 and 2018, the Board held between five and seven days of hearings per month, and saw, on average, 160 inmates monthly. During each hearing day, members typically reviewed between 25 and 30 inmates over the course of several hours, starting in the morning and usually stopping in the mid- to late-afternoon.

Parole Release And Revocation Hearings

Prior to parole release, revocation, reconsideration, and review hearings, staff collated information from various screens in the DOC's offender management and document management systems for each inmate appearing before the Board, and compiled them into packets for Board member review. This process required staff to manually review potentially hundreds of program, disciplinary, and other notes about individual inmates to find pertinent information for inclusion in the parole packets.

Preparing Packets For Parole Release

Parole packets, which could each average several dozen pages in length, were copied and sent to the three Board members assigned to each hearing panel about one week before the scheduled hearing. The packets were comprised of several documents including what the Board referred to as a "face sheet" containing inmate demographic information, the offense, prior parole or probation violations, programs enrolled or completed, disciplinary information, restitution and fees, special conditions and alerts, risk assessment scores, re-entry notes, and a parole synopsis containing the Correctional Counselor/Case Manager's parole recommendation, and mental health visits. The packet also included the "Pre-Parole/Administrative Home Confinement Interview Form" containing the inmate's home, employment, education, and treatment plan; education and employment history; and the inmate's comments about their offense and why, in their opinion, they have earned the privilege of parole. Also included were the inmate's criminal record including a report from the National Crime Information Center, risk assessment reports, sentencing documents, and any other notes or documents staff determined were relevant for the Board to make parole decisions. Board members reported spending, on average, between one and two days reviewing packets in preparation for hearings.

The same information was compiled into a file which would eventually be sent to the PPO responsible for supervising the parolee. Additionally, staff compiled information into a similar file which was retained at the Board's office until the parolee reached their maximum.

Preparing Packets For Revocation Hearings

Staff collated information on parolees appearing before the Board for a revocation hearing. These packets, sent to members a week before the hearing, contained the face sheet, warrant for the parolee's arrest, PPO's summary explaining the alleged violations, and any other pertinent documents. Although they contained fewer documents and Board members reported needing less preparation time, the packets could still have comprised a dozen pages depending on the inmate's criminal history and prior parole or probation violations. This information was also maintained in the file sent to the PPO and the file retained at the Board office.

Staffing Parole Release And Revocation Hearings

Either the Executive Assistant or one staff member was present for all hearings, with each staffing one hearing day per week. Staff created an audio recording for each hearing, and recorded the Board's decision and parole conditions in the DOC's offender management system, which would later be incorporated into the results of hearing and transferred into the parole certificate containing the specific conditions of parole.

Parole Board Revenues And Expenses

Board operations were funded through an appropriation from the State's General Fund. Expenses from SFY 2017 to 2018 increased by eight percent, with the Board spending between $380,000 and $410,000 each year. The biggest source of expenditures was its five staff, Board member stipends, and mileage reimbursements paid to Board members, which accounted for approximately 95 percent of expenditures each year. Table 2 shows expenditures for SFYs 2017 and 2018.

Table 2

Board Expenditures,
SFYs 2017 And 2018

	2017	**2018**
Personnel – Classified And Unclassified	$ 303,434	$ 328,673
Personnel - Appointed	48,826	49,749
Telecommunications	11,844	15,009
Travel Reimbursement	9,673	12,505
Rents – Other Than Leases	1,809	1,979
Current Expenses	5,282	2,416
Other	638	415
Total Expenditures	***$ 381,506***	***$ 410,746***

Source: LBA analysis of Board Statements of Appropriation.

BOARD ACCESS TO INMATE INFORMATION

Before parole release hearings, staff provided New Hampshire Adult Parole Board (Board) members a parole packet containing information pertaining to the inmates appearing before them. Information was retrieved from the Department of Corrections' (DOC) offender management system (CORIS) and document management system (FileHold). However, mental health and substance abuse information was located in a separate medical records system, to which neither the inmate's Correctional Counselor/Case Manager (CC/CM) nor Board staff had access. Prior to parole release hearings, Board staff collated information from various screens in CORIS to compile a summary, or "face sheet," containing demographic information, the inmate's offense, disciplinary records for the most recent year, programs enrolled and completed, risk assessment scores, and a supplemental information provided by the inmate's CC/CM.

We found some information used to make parole decisions was incomplete and, at times, inaccurate. Information in the Board's parole packets was sometimes missing and the Board did not have access to some mental health and substance abuse information which was necessary to make parole decisions. The Board also did not have a process to weigh the factors it used to make parole decisions, lending itself to inconsistent decisions among hearing panels. Finally, reports filed by Probation/Parole Officers (PPO) alerting the Board of inmates who had been arrested or convicted of new crimes, or absconded for a period of time were not forwarded to, or reviewed by, Board members, missing the opportunity for the Board to provide better supervision.

Observation No. 1

Ensure Information Provided To The Board Is Complete

State law required the Board establish criteria for evaluating prospective parolees to determine the reasonable probability the inmate would not violate the law and conduct themselves as good citizens. In addition to mental health and substance abuse information discussed in Observation No. 2, the Board's administrative rules required it to consider nine other criteria including: adequacy of the parole plan, seriousness of the offense, conduct while incarcerated, and evaluations and recommendations from DOC personnel and other sources.

The American Correctional Association's (ACA) *Standards for Adult Parole Authorities* stated the effectiveness of a parole board is determined largely by the quality and accuracy of the information available to those conducting the hearing. We found the Board did not always have complete information necessary to consider each criteria. Without this information, the Board could not ensure it considered all criteria required by its rules, and could not make a determination of the reasonable probability the inmate would not violate the law while on parole.

Appropriateness And Adequacy Of Parole Plan

Administrative rule Par 301.03(b) required the Board consider the appropriateness and adequacy of the parole plan including the inmate's employment plan, employment history, and stability of past employment; housing plan including the specific residence, neighborhood, and community;

and availability of mental health and rehabilitative services. Of the 41 parole release files we reviewed, 36 inmates appeared before the Board for release to the community, while five were being considered for parole to their consecutive sentence or for parole to serve time for a charge in another jurisdiction. We excluded these five from this analysis as they would not be residing, receiving treatment, or seeking employment in the community. Of the 36 appearing before the Board for release to the community:

- five (14 percent) did not have a completed home plan, although three (eight percent) were granted parole;
- six (17 percent) did not have an employment plan, although four (11 percent) were granted parole;
- eight (22 percent) did not have a treatment plan, although seven (19 percent) were granted parole; and
- nine (25 percent) did not complete the education and employment history portion of their parole plan, although seven (19 percent) were granted parole.

Seriousness Of The Offense

Par 301.03(e) required the Board consider the seriousness of the offense for which the inmate was incarcerated or other offenses committed, including the degree of violence. While the Board received the charge for which the inmate was convicted and being incarcerated, two Board members stated information such as the indictment and pre-sentencing investigation was sometimes not included, making it difficult to determine the circumstances of the crime.

Conduct While Incarcerated

Par 301.03(h) required the Board to consider the inmate's conduct during incarceration including the inmate's disciplinary records and evidence of self-improvement through various programs. According to Board members and staff, the Board limited the disciplinary information it received to those occurring within one year of the inmate's parole hearing. Of 41 parole release hearings we reviewed, we found 12 inmates who had disciplinary action, or showed a pattern of disciplinary issues, that were outside of the one year mark. This information was not provided to the Board during its review. By limiting its review of disciplinary information to only one year, the Board may have excluded a pattern of behavior that could impact an inmate's probability of success on parole. For example, the Board granted parole to the following inmates despite numerous disciplinary infractions occurring over one year before the parole hearing:

- An inmate serving a minimum of two years for theft had 24 disciplinary actions in the first nine months of incarceration, six of which were major infractions. None of these actions were included in the Board's disciplinary information section, as they occurred over one year prior to the date of the hearing. The inmate did not complete a required self-improvement program, and was terminated from another after two sessions for failing to work on underlying issues.
- An inmate serving a minimum of two years on a drug charge was initially denied parole because of ten disciplinary actions, one of which was a major infraction. The inmate was approved for parole eight months later, even though the Board was aware of four additional

infractions within those eight months. The inmate did not complete any self-improvement programs while incarcerated, but was granted parole to serve time in another jurisdiction.

- The Board had information on an inmate's six minor disciplinary actions, but the inmate had an additional six, including two major infractions occurring over 18 months before the hearing. The inmate was serving a three-year minimum for a drug charge and completed one self-improvement program, but was terminated from a substance abuse program for continued drug use.
- The Board had information on an inmate's one minor disciplinary action; however, the report did not include 11 other infractions, including seven major infractions, which occurred over one year before the hearing date. The inmate was serving a three-year minimum for burglary and did not complete any programs while incarcerated.
- An inmate serving a three-year minimum for armed robbery received nine disciplinary actions including two major infractions, the last of which occurred 15 months before the hearing. The inmate was also terminated from two programs.

Evaluations And Recommendations

Par 301.03(i) required the Board to consider evaluations and recommendations of DOC personnel, courts, and relevant social services or mental health agencies.

Correctional Counselor/Case Manager Recommendation

As part of the information the Board received, the inmate's CC/CM completed a parole synopsis which asked for the CC/CM's impression and recommendation. In five of the 41 cases we reviewed, the CC/CM did not provide an impression or a recommendation to the Board. The Board granted parole in all five cases.

Recidivism Risk Assessments

The DOC used the Ohio Risk Assessment System (ORAS) to determine an inmate's recidivism risk. Inmates were supposed to be assessed using the Prison Intake Tool (ORAS-PIT), upon entry into the prison, and the Re-entry Tool (ORAS-RT) before their parole hearing. Of the 41 inmates we reviewed, we found five (12 percent) were not assessed upon entry into the prison, and 21 (51 percent) were not assessed prior to their parole hearing. One inmate, who had been incarcerated for five years prior to the parole hearing, did not have an ORAS-PIT or ORAS-RT assessment.

Of those who had not received an ORAS-RT assessment, the only assessment available to the Board was from the ORAS-PIT which, on average, was completed over 15 months prior to the hearing. The Board granted parole to 18 inmates who had not received an ORAS-RT assessment, three of whom were assessed as a high risk of recidivism during their ORAS-PIT assessment. Additionally, Board members reported not fully understanding the significance of the two risk assessments, and one member reported using the higher of the two scores to make a determination about parole.

Recommendations:

We recommend the Board develop a process to ensure information provided is accurate and complete. The Board may wish to consider creating a checklist to ensure all necessary information pertaining to each evaluation criteria is included in the documents provided to Board members, noting any missing documentation.

We also recommend the Board work with the DOC to ensure all information relevant to making parole decisions is available, and assessments of recidivism risk are updated prior to the inmate's parole hearing.

Board Response:

We concur. The Board relies on information furnished by the DOC which we have to assume is accurate, as neither the Board, nor its staff at this current staffing level, have the time or resources to fact check the information provided to the Board by DOC.

It was a Board decision to review only the last 12 months of disciplinaries because recent conduct is more relevant to the parole decision than tickets from over a year ago. We are collaborating with the CC/CMs to develop a new synopsis form that will require them to provide the detailed information on risk level, programs, disciplinary history, and other criteria we use in making the parole decision, as well as their own recommendation. We will also look at a standard checklist that will list all documents and evaluation criteria necessary for a complete parole packet.

Timeline for the Remediation of Audit Observations

Improved Parole Synopsis	*January 2020*
Checklist For Packet Preparation	*August 2019*

DOC Response:

We concur with completing a risk assessment specific to the risk of recidivism. We will support the Adult Parole Board (NHAPB) in orienting them through training of the use of the tool and understanding the scoring matrix. We currently require case managers to complete an ORAS-RT before they go before the parole board. We will enhance our policies to ensure that expectations as implemented through administrative rule by the Adult Parole Board are incorporated into our policies to ensure our case management staff have specific guidance on what to include in a Parole Packet. We will also work with the parole board in order to develop communication procedures, so that if parole packets are submitted with missing information as outlined in policy or administrative rule, NHDOC supervisors will be notified in order to take appropriate action.

Observation No. 2

Give The Board Access To Essential Inmate Mental Health And Substance Abuse Information

The Board did not have access to inmates' mental health or substance abuse records, hindering its ability to verify information it may have been provided. In determining the reasonable probability of an inmate's success on parole, administrative rules required the Board consider such factors as an inmate's history of illegal drug and excessive alcohol use; evidence of self-improvement through institutional programs specifically those which address issues contributing to criminal activity; and evaluations and recommendations from the DOC and relevant social service and mental health agencies. The ACA states accurate information is essential; therefore, it recommended a procedure to verify materials provided. Additionally, it specified materials that cannot be verified should be noted.

Inaccurate Or Incomplete Mental Health And Substance Abuse Information

Before parole release hearings, Board members were provided a parole packet of information pertaining to inmates appearing before them. As part of this packet, Board members were provided information on programs inmates may have been recommended to take as well as mental health, substance abuse, anger management, or other self-help and educational programs they may have been enrolled in or completed. Additionally, the inmate's CC/CM provided a synopsis which sometimes provided supplemental information about these programs. Packets were compiled using information pulled from CORIS. However, mental health and substance abuse information was located in a separate medical records system, to which neither CC/CMs nor Board staff had access. Some program information contained in CORIS was ambiguous or not available; therefore, CC/CMs and Board members reported relying on inmates to provide some of this information. However, without access to the medical records system, they could not assess the veracity of the information provided, sometimes resulting in the Board receiving inaccurate or incomplete information.

We were able to review information on 41 parole release hearings which occurred during State fiscal years (SFY) 2017 and 2018, and in 14 cases (34 percent), we found information provided to the Board contradicted information found elsewhere in the DOC's systems. The Board granted parole in all 14 cases. Specifically, we found:

- Five cases where CC/CMs reported an inmate completed mental health or substance abuse programs; however, we could not find evidence the inmate was enrolled or actually completed the program. In four of these cases, we found evidence the inmate was terminated from the program, in some instances after only a couple of sessions, for either not attending or not working on their underlying issues.
- Three cases where inmates reported completing mental health or substance abuse programs; however, we could not find evidence the inmate was actually enrolled. In one instance, we found the inmate was enrolled in a different mental health program than the one reported, but was terminated for failing to attend.

- Four cases where the information contained in Board members' parole packets indicated an inmate completed mental health or substance abuse programs; however we could not find evidence the inmate was enrolled in or completed the program. In one instance, the inmate was terminated from a substance abuse program for drug use. In two other cases, the inmates were enrolled in a different substance abuse program than the one indicated in their parole packet, but never completed those programs.
- One case where a case manager reported the inmate had already completed substance abuse treatment prior to the parole hearing; however, the inmate did not complete it until after parole was approved.
- One case where an inmate reported completing other self-improvement programs; however we could not find evidence the inmate was enrolled in the programs.

In at least three of these instances, we found case notes indicating the inmate may have stopped attending mental health or substance abuse programs after they had been approved for parole.

Access To Records Restricted To DOC Medical Personnel

According to the DOC Commissioner, inmate health records were protected by federal privacy laws which restricted access to only authorized personnel. Federal laws and regulations prohibited the disclosure of substance abuse use disorder records, with a few exceptions, unless the inmate voluntarily completed a release. Consequently, records were restricted mainly to clinical personnel working in the Division of Medical and Forensic Services. Other DOC personnel, including CC/CMs and PPOs, were not authorized to have access.

In the past, Board staff and CC/CMs had access to summaries compiled when inmates were discharged from programs through CORIS. These discharge summaries provided CC/CMs and the Board with a synopsis of the inmate's diagnosis, treatment goals, progress during treatment, and follow-up recommendations. However, when the DOC replaced its medical records system in November 2016, these summaries were no longer available. Instead, the only information available to the Board were sporadic notes mental health clinicians or other DOC staff may have entered into CORIS, and a count of the number of times an inmate saw a mental health clinician each year. In the absence of CORIS information, CC/CMs and Board staff reported occasionally contacting clinicians directly to obtain additional information; however, this was described as lengthy, cumbersome, and sometimes information was not provided in time for the inmate's parole hearing. Without adequate mental health information, the Board had limited access to an inmate's alcohol and drug history, the level of their participation in self-improvement programs, and evaluations and recommendations from DOC clinical personnel running these programs. Without this information, the Board could not reasonably assess whether certain inmates would succeed on parole. Additionally, the Board was required to impose conditions to address each parolee's treatment needs, taking into consideration treatment recommended by DOC providers. Subsequently, it could not formulate parole conditions which could help contribute to an inmate's success.

Regional Approaches

All six of the nearby states' paroling authorities we contacted reported having some access to inmate mental health and substance abuse information. While not all states responded to our follow-up questions, three states, Vermont, Maryland, and Delaware, reported requiring inmates to sign a release allowing the board access to this information. While the other states' paroling authorities reported having direct access to these records, Vermont granted DOC personnel access to this information and relevant information was provided to the parole board. Personnel from Connecticut reported it was provided access through a release as well as some provisions in its state law.

The DOC had not implemented a waiver or release of information; however, according to DOC and Board personnel, one had been in the process of being developed since February 2018.

Recommendations:

We recommend the Board continue to work with the DOC to establish a process for access to mental health and substance abuse information which may be necessary for the Board to determine the reasonable probability of an inmate's success on parole. The process should include an assessment of:

- **who will have access to these records,**
- **how these records will be accessed,**
- **how information will be provided to Board members, and**
- **how these records should be protected.**

Until this process is implemented, we recommend the DOC and the Board develop a process to verify whether information provided for parole hearings is accurate and complete.

Board Response:

We concur. The Board has approved a proposed release of information form that will be offered to each inmate on admission. We will work with DOC to determine exactly what information on mental health and substance abuse treatment will be released. At a minimum we expect to receive a discharge summary and recommendations for follow up in the community.

Timeline for the Remediation of Audit Observations

Release of Information Form, Finalized & In Use	*January 2020*

DOC Response:

We concur with the recommendation to develop a process to work with the Adult Parole Board to provide an opportunity for resident to authorize the release of relevant mental health and substance abuse information to the parole board for hearings. The NHDOC has developed a new release of information so that relevant mental health, substance abuse and other relevant health records can be released within the protections as outlined by the Health Insurance Portability and

Accountability Act (HIPAA) and the provisions outlined by Federal law 42 CFR, specific to protections regarding substance use disorder treatment. We have already published a authorization to release information form specific to the privileges available during the criminal justice process that would allow for the release of minimally necessary healthcare information to be shared. A Case Manager will go over the form with the client who will be going before the parole board, when the release is signed, which will allow relevant information to be shared. We will continue to work on a process with the adult parole board and the division of medical and forensics to determine what information is released, how it is released and in what format it is released.

Observation No. 3

Develop Procedures To Weigh Decision Making Criteria

Since at least 1980, nationally recognized standards for paroling authorities recommended developing various criteria, with guidance specific enough to permit consistent application in individual cases, to show decisions to grant, deny, review, and revoke parole were in conformity with the written criteria and guidelines. While the Board had certain criteria in statute and administrative rules to consider when making parole decisions, there were no formal guidelines to ensure consistency in their decisions across different hearing panels.

Technical Assistance To Develop Parole Guidelines And Data Analysis

As part of a DOC federal grant, the Board was provided technical assistance from a consultant throughout calendar years 2012, 2013 and 2015 to: 1) better align its decision making and interviewing process with evidence-based practices; 2) develop parole and revocation guidelines to ensure consistency in their application among all Board members; and 3) receive professional training to enhance parole decision-making related knowledge and skills.

The Board and DOC collaborated to develop parole guidelines, with assigned weights for core factors of each criterion, which would evaluate each offender consistently, and produce a baseline score as a threshold to be utilized for broader consideration by the Board. The consultant emphasized the importance of data collection to analyze the effectiveness of the parole guidelines and support evidence-based decision making processes. The consultant also recommended the Board periodically review and modify the guidelines to facilitate decision making.

In 2013, the Board agreed to utilize the guidelines and manually collect data until the DOC could develop an automated process. When the consultant returned in 2015, the Board had not collected the data manually and parole guidelines had not been automated. The consultant's report noted the DOC, at the time, agreed to prioritize the automation of parole guidelines by September 2016 and the Board agreed to manually collect data in the interim with templates provided by the consultant. However, by 2018 the process had still not been automated and the Board did not review the guidelines to make modifications so it could be used; therefore, the guidelines were not utilized and data collection never occurred.

Inconsistency Among Board Members

Board members and stakeholders reported concerns regarding the lack of clear guidelines and continued inconsistencies amongst hearing panels. Although the Board Chair retained parole guideline materials from the consultant, and had been part of the guideline development and training, the guidelines were not incorporated into Board processes and no formal training occurred for other Board members to ensure consistency amongst Board members' decision making. Instead, newly appointed Board members observed hearings and received a binder, collated by the Board Chair, containing relevant regulations, court cases, acronyms, contact information, a blank parole certificate, and parole guidebook to provide Board members a basic understanding of how the correction system functioned and the Board's role within it.

In August 2018, the Board began drafting standard parole hearing procedures, but had not incorporated evidence based-guidelines or assigned weights to specific criteria. Without evidence-based guidelines weighing each criterion, Board members utilized their discretion and personal preference to prioritize consideration of certain criteria or did not consider certain criteria at all.

Board Members' Prioritizations Varied

Although weighted criteria and guidelines were not implemented, the parole guidebook emphasized the most important criteria for parole were the inmate's disciplinary record and program participation during incarceration. Board members reported a range of prioritized criteria preferences:

- one member prioritized the inmate's statement surrounding their offense, the conduct of the inmate at the hearing, and the parole plan;
- one member prioritized the disciplinary record and parole plan;
- one member prioritized the disciplinary record and parole synopsis provided by the CC/CM;
- one member prioritized the criminal record, conduct under previous supervisions, disciplinary record, and parole synopsis; and
- two members prioritized the disciplinary record and programming.

Further, as we discuss in Observations No. 5, No. 6, and No. 13, other Board decisions related to medical parole and petitions for reduction of maximum were not based on consistently evaluated criteria. For revocation hearings, one member reported prioritizing the testimonies from the PPO and inmate, while another member based their decisions on the information provided in the warrant summary.

Lack Of Consideration For Certain Criteria

In other instances, Board members were unable to consider required criteria due to inaccurate or lack of information provided from the DOC, as discussed in Observations No. 1 and No. 2. If a Board member requested additional information regarding an inmate from the Executive Assistant, Board members were unsure if the same information was provided to the other members of the hearing panel potentially hindering their ability to fairly evaluate an inmate.

Additionally, one Board member and stakeholders indicated decisions on whether to grant parole may have been made based on information provided prior to the hearing, effectively giving little or no consideration to required criteria which were only accessible at the hearing such as the inmate's conduct and attitude, degree of empathy or remorse, and developments of personality and maturity, as well as victim input when it was provided.

Board Hesitation To Use Weighted Guidelines

Several Board members expressed concerns that implementing guidelines and conducting analyses on data collected would remove discretion and adversely influence Board decisions. In actuality, national research showed credible parole decision making involves judgments based on factual data and policy considerations. Parole guidelines augment the professional judgment of the Board members by incorporating evidence-based practices which reduces arbitrary and capricious decision making.

We reviewed a sample of 66 inmates who received an initial parole hearing during the audit period. We found the Board approved parole for 55 of those inmates (83 percent) at their first hearing. An additional 11 inmates initially denied parole had a subsequent hearing prior to September 2018, and nine were subsequently approved for parole. Overall the Board's parole approval rate for this sample was 97 percent.

The Board had discretion to deny parole if certain criteria were not met or the Board felt there was a reasonable probability the inmate would not conform to the conditions of parole. Regardless, Board members reported there were instances in which even though there were concerns surrounding whether the inmate would succeed on parole, the minimum criteria appeared to be met so the members felt the inmate had to be released. Utilizing parole guidelines would increase the Board's ability to assess risk more accurately and effectively achieve Board-stated goals such as public safety.

Recommendations:

We recommend the Board review, modify, and implement available guidelines as well as collaborate with the DOC to develop a process to facilitate the transfer of accurate and complete information to members of hearing panels for their consideration.

We also recommend the Board:

- **develop formal training for Board members incorporating established guidelines;**
- **adopt policies and procedures to ensure guidelines are continually reviewed for modifications and used for all Board decisions to grant, deny, review, or revoke parole; and**
- **establish processes to begin data collection and analysis.**

Board Response:

We concur. After developing and weighting the guidelines with the assistance of a consultant, we were never able to implement them. The scoring chart was supposed to be linked to CORIS and automatically populated with program, disciplinary, and risk scores, but due to lack of IT support, it never happened. Our overburdened staff cannot take on the task of collecting and analyzing this data. We will need the assistance of a consultant to update our previous work and provide training to current members and a commitment from DOC to electronically fill out the scoring chart. Until that happens the Board will continue to employ the unweighted guidelines we have already adopted for reviewing the data in parole packets and conducting the parole interview.

Timeline for the Remediation of Audit Observations

Development and implementation of weighted guidelines	*When technical assistance becomes available.*

DOC Response:

We concur. The NHDOC and NHAPB have distinct statutory functions which require the NHDOC to defer all release, revocation and discharge decision making to them in order to ensure the autonomy of the decisions of the NHAPB. The NHDOC will support the NHAPB once they establish guidelines pursuant to this observation in providing the necessary data and modifications to policy to align to their practices in order to ensure NHDOC staff provide accurate and complete information.

Observation No. 4

Establish A Process To Review Parole Records

RSA 651-A:4, II required the Board have "legal custody of all persons *released on parole* until they receive their discharge or are recommitted to the prison." [emphasis added] As of November 8, 2018 there were over 2,300 parolees under the Board's custody. RSA 651-A:20 required the Board review records "for each parolee in its custody at least once every 36 months." However, according to Board members and staff, the Board did not have a process to review parolee records maintained in CORIS.

Review Only Performed While An Inmate Was Under The Custody Of DOC Commissioner

According to Board staff, the Board reviewed inmate records before they appeared for parole release hearings, and again when they appeared before the Board for revocation hearings. However, the Board's review associated with an inmate's parole release occurred *before* the inmate was approved for parole, when the inmate was still incarcerated which, according to RSA 651-A:2, I, the inmate was considered to be under the custody of the DOC Commissioner. Statutes required the review occur when the inmate was in the *Board's* custody, and defined this period as the time when they were released on parole and until their discharge or return to prison.

The Board also reportedly reviewed the inmate's record when they appeared for a revocation hearing. According to Board staff, very few parolees successfully completed parole without at least one violation and, in many instances, parolees appeared for revocation hearings more often than once every 36 months. Our analysis of 55 inmates who petitioned for a reduction of maximum sentence showed 44 inmates (80 percent) had been on parole for three years or more, 13 of whom had been on parole for five years or more. Only three had appeared before the Board for a revocation hearing, while the remaining 41 had never appeared before the Board. Consequently, these 41 inmates had never been reviewed by the Board, eight of whom had compliance issues while on parole, including two who had been arrested, two who had issues with drug use throughout their parole, and one who had been both arrested and had issues with drug use.

No Board Review Of Supervision Notes

Once on parole, a PPO from the DOC's Division of Field Services supervised the parolee. PPOs used CORIS to document contact with the parolee including summarizing office and home visits, phone contact with the parolee or other parties, and police contact. The Board did not have a process to review PPOs' supervision notes to identify issues which may warrant a review of parole conditions. Instead, it relied on PPOs to seek a warrant to bring the parolee before the Board for a revocation hearing when a parolee may have violated their parole conditions.

However, we found varying thresholds at which PPOs requested a warrant. Additionally, Board staff reported PPOs had a significant amount of discretion when determining whether to request a warrant from the Board. For example, we found the following:

- A sex offender required to report to the PPO's office monthly only reported for office visits eight times between October 2015 and May 2018. The parolee failed to report for 12 consecutive months between April 2017 and May 2018 and was arrested in another state in May 2018 for failure to register as a sex offender. The PPO did not request an arrest warrant from the Board until the other state contacted the PPO about the parolee's arrest. In contrast, another parolee on parole for an escape attempt was arrested after 20 days on parole for failure to report to the PPO.
- A warrant was not requested until months later for a parolee who left a 28-day in-patient treatment program after one day, despite parole conditions requiring arrest and return to prison if the parolee was "unsatisfactorily discharged from or leave the program prior to completion…." Supervision notes indicated the parolee continued to be supervised on parole, continued to use drugs, refused to seek other treatment, and associated with other parolees who were on supervision until a warrant was requested six months later. In contrast, another parolee who left an in-patient program prior to successful completion was arrested upon leaving and brought before the Board for a revocation hearing.
- A warrant was not requested for a parolee who, after having already appeared before the Board for three revocation hearings within nine months, was arrested by the local police department on a drug charge and was also wanted on an active warrant. As of October 2018, the PPO had not requested a warrant from the Board to bring the parolee in for a revocation hearing.
- A parolee released on parole in 2014 who was arrested for criminal threatening five months after being released on parole, was arrested again two years later for domestic violence in

another state, and again one month later for violating conditions of bail. The parolee was convicted of these charges but the PPO did not request a warrant from the Board until one month after the parolee was convicted.

- A parolee arrested for disorderly conduct while on parole, was not brought back for a revocation hearing. The Board may have been unaware of this charge when granting a reduction to his maximum sentence, even though the charge had not been resolved.
- A parolee arrested and convicted twice on drug charges while on parole, was not brought back for a revocation hearing. The Board may have been unaware of these convictions when granting a reduction to his maximum sentence.

No Board Review Of Reports Required By Statute

RSA 651-A:16 required the PPO supervising the parolee submit a report to the Board if a parolee was arrested or convicted of a misdemeanor or felony offense, or absconded for more than 30 days. According to Division of Field Services management, after reviewing these reports the Board could initiate a review hearing or issue an arrest warrant if deemed appropriate.

However, there was no process in place for Board members to receive or review these reports. While Board staff acknowledged receiving these reports, staff reported they were not forwarded to Board members for review. Board members also confirmed not receiving or reviewing these reports. Without a process to review these reports, Board members may not be aware of parolee behavior which may have justified a review hearing or arrest warrant.

No Board Review Of Supervision Levels

DOC policies required PPOs reassess parolees at least annually to determine their risk of reoffending, and whether they were being supervised at the appropriate level. Chief PPOs were also required to review ten percent of each PPO's caseload annually to ensure compliance with all DOC supervision policies. Our review of 41 parole release files showed of the 20 inmates who were eventually released to parole supervision, 12 parolees (60 percent) were not reassessed annually. In two instances, the Chief PPO noted a new risk assessment was required to be completed, but in both instances, had not been conducted. Specifically:

- In one case, the Chief PPO requested an assessment be completed in October 2017; however, by October 2018, a new risk assessment had not been completed, with the most recent assessment having been conducted in January 2016. The parolee continued to be supervised at the maximum supervision level even though the only issues identified during supervision was the parolee not attending counseling sessions.
- In the other case, the Chief PPO requested an updated assessment in February 2018, but by October 2018 it had still not been completed. The original assessment had been conducted in October 2016 when the parolee was still in prison. The parolee continued to be supervised at the minimum supervision level despite an arrest for domestic violence, criminal threatening, and trespassing, and another arrest for driving after license revocation.

Without a mechanism to periodically review supervision levels, the Board may not be aware whether supervision levels were appropriate for the risk posed by the parolee.

Recommendations:

We recommend the Board develop a process to ensure parolee records are reviewed at least once every 36 months, as required by statute. This review should include:

- **periodic review of supervision notes and parolee supervision levels to ensure the two are aligned;**
- **a process to review reports filed by PPOs if a parolee was arrested or convicted of a misdemeanor or felony offense, or absconded for more than 30 days.**

Once a review process is in place, the Board should develop formal policies and procedures to address:

- **how and by whom the review will be conducted,**
- **frequency of the review,**
- **how the information will be presented to the Board, and**
- **circumstances which may justify a review hearing or initiation of an arrest warrant.**

We also recommend the Board work with the DOC to review criteria for when parolees should be brought back before the Board, ensure recidivism risk assessments are conducted at least annually, and ensure issues identified during Chief PPO reviews are corrected timely.

Board Response:

We concur in part. We will formalize the current process for reviewing notifications from PPOs of misdemeanors, felonies, and absconding more than 30 days. The chair or designee will review all notifications and if there appears to be a threat to public safety, the chair or designee will decide whether increased sanctions such as a review hearing or a warrant are appropriate.

The Board doesn't believe it is necessary or practical, given existing staff resources, for us to review parolee records every 36 months and would support repeal of this statute. We rely on supervising parole officers to manage their case appropriately and notify the Board if/when issues with compliance arise. There is also a process in place that the Parole Officer and/or Chief of the District Offices review all parole and probation cases annually, so these cases are already being reviewed sooner than 36 months.

Moreover, the Parole Board Office staff, including the Executive Assistant, continues to be fully immersed in the daily operations of the office, and have neither the time nor resources to achieve this task. If for some reason the statute wasn't repealed, and the Parole Board office were to gain additional resources and personnel, these file reviews could be accomplished.

Timeline for the Remediation of Audit Observations

Standardize process of reviewing notifications	*June 2019*
Support repeal of 36-month review requirement	*January 2020*

LBA Rejoinder:

While the Board stated it relies on the parolee's PPO to notify it of compliance issues, the Observation noted PPOs had a lot of discretion when determining whether to request a warrant from the Board. We cited six examples where parolee's non-compliance appeared to warrant Board attention, but were not brought to the Board's attention timely or at all.

DOC Response:

We concur. The NHDOC supervision and recidivism risk assessment processes follow best practices to address risk, need and responsivity of each individual. Therefore, the sanctions applied to each individual are unique to the characteristics presented with that case and it is not possible to have a one size fits all approach. Arrest for a new offense does not always equate to a parole violation, as the evidence required for a parole revocation is a conviction. In some cases, when granted bail, individuals on parole have not been found guilty of a new offenses. These cases are examined in a case by case situation to ensure public safety. NHDOC policy and procedure 5.51 provides guidance on addressing non-compliance, and the NHDOC reporting mechanism was developed in collaboration the NHAPB. The NHDOC has mandatory reporting mechanisms to the NHAPB that are consistent with statute. The Department will create a tracking system for the risk assessment tool to ensure updates occur timely. The NHDOC will work with the NHAPB to ensure all reporting meets their needs.

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MEDICAL PAROLE

Nationally, most states' regulatory frameworks included provisions permitting sentence modifications for aging or infirmed inmates which superseded any mandatory minimum parole date (minimum) or maximum sentence (maximum) requirements. In New Hampshire, statute allowed the New Hampshire Adult Parole Board (Board) to grant medical parole for an inmate if it received a recommendation from the Department of Corrections (DOC) Commissioner and Director of Medical and Forensic Services, and if it determined:

- the inmate had a terminal, debilitating, incapacitating, or incurable medical condition;
- the cost of care, treatment, and resources was determined to be excessive; and
- there is a reasonable probability the inmate would not violate the law while on medical parole and would conduct themselves as a good citizen.

Although infrequent compared to parole release and revocation hearings, the Board did not promulgate administrative rules to aid hearing panels in consistently determining eligibility for medical parole. It also implemented additional criteria and requirements on inmates recommended for medical parole which were not found in statute or rules, and did not have a formal process for reviewing continued eligibility after the inmate was released on parole. Additionally, the Board did not consistently consider whether the inmate would be of good conduct while on medical parole, and we found some inmates were released without evidence this criteria was discussed during the hearing or documented in the file. The Board also inconsistently stipulated special conditions, which were required to be specific to each inmate on medical parole, and lacked a formal process to modify parole conditions when needed after an inmate was released to supervision.

Observation No. 5

Promulgate Rules For Medical Parole

The *New Hampshire Administrative Procedure Act* stipulated administrative rules were required to implement, interpret, or make specific a statute enforced or administered by an agency, and prescribe or interpret an agency policy, procedure, or practice requirement binding on persons outside the agency. In addition, the Board was statutorily required to adopt rules relevant to the parole hearings process, criteria, conditions, and procedures specifically for medical parole.

The Board did not sufficiently promulgate statutorily required administrative rules pertaining to medical parole procedures, lacked comprehensive administrative rules to interpret and implement certain aspects of medical parole, and informally established other medical parole policies affecting persons outside the agency.

Lack Of Definitions

Excessive Costs

No definition of "excessive" existed in statute or administrative rules, and the Board did not develop policies to determine whether or not a cost was considered excessive. As part of the criteria for granting medical parole, the Board had to consider whether "the cost of medical care, treatment, and resources is determined to be excessive." We reviewed all 11 medical parole hearings occurring during State fiscal years (SFY) 2017 and 2018, and found in all instances DOC medical personnel described the cost of treatment or resources needed to treat the inmate as "excessive." Costs associated with these cases ranged from $5,000 to $500,000.

While Board members received cost information prior to the hearing for eight of the 11 cases being considered for medical parole, the remaining three cases did not contain formal documentation of this requirement. Instead, the only evidence we found that the Board considered this requirement for these three cases was through its discussions during the inmate's hearing. Since the Board deleted verbatim recordings of its hearings after one year, it would be difficult to confirm the Board consistently considered this criterion when granting medical parole if cost information was not documented in the file.

In October 2017, DOC personnel reported treatment for a specific diagnosis had decreased by nearly half and would now cost approximately $35,000; however, the Board did not determine whether this would be considered "excessive." In that month, DOC medical personnel recommended medical parole for two inmates with that diagnosis based on the excessive cost of treatment, even though the inmates did not specifically meet the other two criteria. The Board eventually denied medical parole for both cases.

Periodic Medical Reports

Statute authorized the Board to request, while administrative rules required, medical parolees submit to periodic medical exams and provide the reports to the DOC and Board to determine whether the parolee still met the criteria for medical parole. There was no definition of "periodic" in statute or administrative rules, leaving the frequency of exams and reports to the Board's discretion. However, in practice, the Board interpreted statute to only allow for quarterly reporting when medical examinations were given as a condition of medical parole, limiting its ability to tailor the frequency of reporting to each parolee's specific medical needs.

Further, there were no policies and procedures to clarify how the Board determined quarterly reporting would be appropriate, or whether it was formally established to be the standard frequency. Regardless, although administrative rules required inmates submit periodic medical reports, we found the Board only required these reports in two of the nine medical parole releases it granted. In one instance, the Board stated during the hearing that reports would be required every six months, but the hearing results specified quarterly reports. In the other instance, the Board required quarterly reports.

Review Hearings

Review hearings were reportedly used for several Board actions such as to implement a sanction before arising to the level of a revocation, revisiting conditions for a parolee upon request of the Probation/Parole Officer (PPO) or parolee, and for hearings subsequent to the initial granting of medical parole. Statute required the Director of Medical and Forensic Services review periodic medical reports and present the findings to the Board. It also required the Board to review these findings to determine whether the parolee remained eligible for medical parole. The Board interpreted statute as requiring the Board to hold review *hearings* for this determination. While likely appropriate, statute did not define, and there were no administrative rules interpreting or defining the purpose of each type of review hearing, nor did it define a review hearing generally.

Lack Of Procedures

With the exception of the three conditions for eligibility outlined in statute and the required presence of the Medical and Forensic Services Director or designee at the hearing, there were no procedures in administrative rule or Board policy for medical parole hearings or review hearings.

Parole Plans Submitted To The Board

Statute required the Director of Medical and Forensic Services submit a parole plan to the Board once the Board determined the inmate was eligible for medical parole. We found two of the 11 medical parole cases did not have a parole plan at the initial hearing, both of which the Board granted medical parole. There was no follow-up process for the Board to review a parole plan if it was not submitted at the initial hearing for medical parole.

Division of Field Services management stated PPOs were not always provided sufficient information to investigate parole plans, especially for medical parole. In one of these two instances, DOC medical personnel informed the Board that the inmate's parole plan was created by the Correctional counselor/Case Manager (CC/CM) without medical personnel input and was sent to the Division of Field Services for investigation without adequate medical information necessary to determine the inmate's housing needs. The Board did not receive or review the parole plan until DOC medical and Field Services personnel requested a hearing. The Board ultimately denied the inmate's medical parole release. DOC personnel also indicated they were only able to intervene with their concerns regarding the inmate's housing by chance, and the inmate would have otherwise been released. The other inmate was released without a parole plan being submitted to the Board for review.

Informal Medical Parole Criteria

The Board instituted additional medical parole criteria binding on inmates, persons outside of the agency, without developing administrative rules or formally adopting criteria into policies and procedures. These were additional requirements the inmate was expected to meet prior to their hearing for eligibility. The criteria were discussed during the Board administrative meeting in October 2017 for cases related to a specific diagnosis; however, no motions or voting was undertaken to formalize the Board's decision. In accordance with RSA 91-A *Access To*

Governmental Records and Meetings (*Right-to-Know Law)*, meeting minutes must be kept and include a description of all final decisions made. The Department of Justice's 2015 *Memorandum On New Hampshire's Right-to-Know Law, RSA 91-A* further clarified that final decisions should include "actions on all motions made, even if the motion fails. A clear description of the motion, the person making the motion, and the person seconding the motion should also be included."

National guidance incorporating evidence-based practices stipulated parole candidates should be able to access the information used to consider their release on parole sufficiently in advance of the hearing. At least two inmates who were recommended for medical parole were unaware of the new informal criteria, thereby continuing their hearings to a later date.

Review Hearings

As discussed in Observation No.7, without administrative rules for review procedures, medical parole reviews inconsistently occurred. Additionally, the Board sought legal advice from Board counsel in June 2018 regarding when a review should take place for a medical parolee once they met their minimum eligibility date for parole release. Board counsel recommended the *parolee* initiate the request for the hearing, which appeared to conflict with medical parole statute specifying the *Board* initiate the review process. It also conflicted with administrative rule related to standard parole release which required a hearing within 60 days of the offender's minimum eligibility date for release.

Conflict Between Statute And Rules

The medical parole statute and administrative rule conflicted as to which entity had authority to determine whether a parolee remained eligible for medical parole. After reviewing the Director of Medical and Forensic Services' findings of a parolee's periodic medial reports, statute required the *Board* revoke medical parole if it determined the parolee no longer had a terminal, debilitating, incapacitating, or incurable medical issue. However, administrative rules required the Board to revoke medical parole if the *Director of Medical and Forensic Services* determined the parolee no longer met the criteria for medical parole. Essentially, per administrative rules, if the Director of Medical and Forensic Services made the determination, the Board would have to revoke parole without additional review.

Recommendations:

We recommend the Board promulgate administrative rules and develop formal policies and procedures related to:

- **defining and determining excessive costs,**
- **defining and establishing requirements for periodic medical reports,**
- **defining and conducting review hearings, and**
- **establishing additional medical parole criteria and ensuring all requirements are consistently met.**

We also recommend the Board remedy conflict between statute and administrative rules to ensure the proper entity has the authority to determine continued medical parole eligibility and revoke parole as necessary according to adopted procedures.

Board Response:

We concur. The handling of medical paroles has evolved over several years and policies have been adopted informally as different circumstances have arisen. The administrative rules on medical parole were updated two years ago in response to statutory changes. These "bare bones" rules were written by parole Board members and staff because the assistance of experienced rulemaking personnel from DOC was not available. We agree that there must be a more detailed and uniform procedure spelled out. We can adopt policies for periodic medical reports, conducting review hearings, and additional requirements such as house arrest. We have found that determining excessive cost is more problematic. Medical staff can tell us the cost of medications, hospitalization, and specialty treatments like dialysis or chemotherapy, but they are unable to provide information about the costs incurred when a corrections officer accompanies a patient to treatment. Once this information is available the Board will consider what threshold constitutes excessive cost. Assuming adequate information the Board can formally adopt policies and procedures, but will be unable to revise our administrative rules without the assistance of new staff experienced in rulemaking. The Board is currently working with DOC on a standardized form that will provide a status report to the Board on the determined regular schedule, so they may conduct a review on medical parole cases to determine their continued eligibility for medical parole status.

Timeline for the Remediation of Audit Observations

Periodic Status Report Form/Schedule For Medical Parole Cases	*January 2020*
Policy, Procedure, Statute & Rule Changes for processes; Remedy Conflict Between Statute and Administrative Rules for Medical Parole Cases	*Ongoing*
Define Excessive Cost With DOC	*August 2019*

Observation No. 6

Ensure Inmates Recommended For Medical Parole Receive A Similar Level Of Scrutiny As Other Inmates

There was minimal evidence the Board considered the probability an inmate would violate the law when it considered whether to grant medical parole. Statute allowed the Board to grant medical parole if it determined all of the conditions applied.

The Board's administrative rules reiterated this by allowing it to grant medical parole if a majority of the hearing panel determined the inmate "will not be a danger to the public, and that there is a reasonable probability that the inmate will not violate the law while on medical parole...."

While the Board usually discussed an inmate's medical condition and treatment needs at length during the hearing, it did not always discuss whether the inmate would be at risk of violating the law while on medical parole. Unlike regular parole release hearings, recordings of medical parole hearings revealed very little discussion about the inmate's offense, criminal history, disciplinary history, and efforts the inmate has made to reduce the risk of recidivism including discussion of rehabilitative programs the inmate may have completed while incarcerated. Of the 11 inmates appearing before the Board for a medical parole hearing, some approved for parole included:

- One inmate with three probation violations resulting in the court imposing the portion of the sentence which had been suspended. The inmate was later convicted on a robbery charge while on probation and was released on medical parole six months after being committed to prison on the robbery charge, which carried a minimum sentence of three years.
- One inmate convicted of sexual assault on a minor who denied the charges, did not start the Sexual Offender Treatment program, and refused to be assessed for treatment until being informed of potential eligibility for medical parole.
- One inmate convicted of sexual assault against a minor whose crime and disciplinary history were not discussed during the hearing.

According to one Board member, the Board assumed someone coming before them for medical parole would be incapacitated while they were on medical parole and, therefore, would not pose a risk of violating the law. This opinion was not shared by all Board members. While one inmate who was considered for medical parole was confined to a wheelchair, other inmates appearing for medical parole did not have conditions which would have necessarily rendered them incapacitated, especially if treatment was successful. In fact, one inmate who was released on medical parole while awaiting a major medical procedure had a prior history of violent and sexual offenses dating back over a 20-year period, and was discovered in public consuming alcohol.

By not fully considering the risk that a potential medical parolee would not violate the law, the Board was not fulfilling its statutory function to "protect the public from criminal acts by parolees."

Recommendations:

We recommend the Board ensure it applies a similar level of scrutiny for inmates recommended for medical parole as it does for inmates being paroled on their minimum release date. The Board may want to consider whether the parole record adequately reflects the Board's assessment of whether there is a reasonable probability an inmate will not violate the law while on medical parole.

Board Response:

We concur. The Board consistently evaluates the probability that medical parolees will not violate the law. Without knowing the details of the cases cited, we can say that the Board has released inmates who may have been unable to participate in rehabilitative programs because of cognitive and physical disabilities, or who went to hospice with the expectation that they were near death.

Often times, medical parole cases present very different circumstances and challenges and can't be compared to a standard parole and are given consideration on an individual basis.

Timeline for the Remediation of Audit Observations

Periodic Status Report Form/Schedule for Medical Parole Cases	*January 2020*
Policy, Procedure, Statute & Rule Changes for processes; Remedy Conflict Between Statute and Administrative Rules for Medical Parole Cases	*Ongoing*

Observation No. 7

Thoroughly Track And Review Medical Parolees

The Board lacked a process to periodically review and reassess a parolee's continued eligibility for medical parole, and neither the Board nor the Division of Field Services maintained a complete list of medical parolees under supervision.

Nine inmates were granted medical parole during SFYs 2017 and 2018, eight of whom were eventually released to supervision. From October 2016 through September 2018, parolees were supervised on medical parole for an average of eight months, ranging from two to 18 months. The Board did not have a complete list of inmates who had appeared before it for medical parole, nor could the Board's Executive Assistant provide a list of inmates currently being supervised as medical parolees. Additionally, we found one inmate in which the Division of Field Services appeared to be unaware was being supervised under medical parole instead of standard parole.

Parole was considered a privilege and any release prior to the inmate's maximum sentence was to be made after consideration of criteria consisting of multiple components. However, upon the DOC Commissioner and Director of Medical and Forensic Services recommendations, the Board could grant medical parole to an inmate, regardless of the time remaining before their minimum, provided the inmate met the criteria for medical parole established in statute.

While the Board had legal custody of all parolees, PPOs were responsible for supervising parolees to ensure they complied with Board-imposed parole conditions. If the medical parolee was not compliant with parole conditions, or no longer met the criteria for medical parole, they were to be returned to prison and the custody of the DOC.

Tracking And Supervising Medical Parolees

Prior to the hearing, the Division of Medical and Forensic Services monitored all inmates potentially eligible for medical parole. Once an inmate was released, the Board and Division of Field Services both had legal responsibilities for oversight of parolees, but neither maintained a list of parolees who were released specifically on medical parole, resulting in the inability to continually monitor whether medical parole was still relevant based on the parolee's ongoing medical condition.

No Tracking Of Periodic Medical Reports

Once medical parole was granted, the Board was required to stipulate the inmate submit periodic medical reports to the Director of Medical and Forensic Services. The Board was then required to review these findings to determine whether the parolee still met criteria to remain on medical parole. However, as we discuss in Observation No. 5, the Board only required periodic reporting for two of the nine inmates, and one inmate was stipulated reporting requirements *after* being released on parole. Additionally, the Board did not track which parolees were on medical parole; therefore it could not determine whether medical reports were submitted timely, if at all, for the inmates it required to submit medical reports.

As a result, periodic reporting requirements were not enforced and only one medical parolee received a reassessment to determine continued eligibility for medical parole during the audit period. Additionally, the Board did not receive these findings until it requested this information a year after the parolee was to have already been returned to prison.

Division of Field Services personnel stated resource constraints hindered PPOs' ability to properly follow up with certain medical parolees, particularly regarding special conditions pertaining to medical records. To address deficiencies surrounding enforcement of periodic medical exam reports, Division of Field Services management began collaborating with the Division of Medical and Forensics to create a template to provide quarterly reports to the Board for medical parole eligibility review. The expectation was the template would transfer the burden of enforcing compliance with required medical exam reporting from the PPO to the Division of Medical and Forensics personnel. However, PPOs were statutorily responsible for ensuring compliance with parole conditions.

Enforcement Of Other Medical Parole Conditions

In order to ensure compliance with all medical conditions, parolees were required to provide medical documents and other necessary information to the PPO. However, according to the DOC Commissioner, under federal privacy laws, Division of Field Services could not compel the parolee to provide medical documents to the PPOs. Consequently, PPOs were not always provided necessary information to adequately supervise a medical parolee and would not be able to ensure required medical reports were provided to Division of Medical and Forensic Services personnel.

Minimum Parole Eligibility Date And Reviews For Non-medical Parole Suitability

Irrespective of medical parole, Board rules required all inmates receive a parole hearing within 60 days prior to their minimum. The Board reportedly utilized this requirement to determine whether a medical parolee should remain on medical parole or, after consideration of the full parole release criteria, modify conditions to reflect standard parole release.

We found at least two inmates reached their minimum while on medical parole without receiving another hearing. The Board was aware one inmate's minimum was approaching as the inmate had already had a hearing for medical parole. However, Board counsel recommended the parolee

initiate a review rather than hold another hearing for this parolee's minimum which appeared to conflict with statute and administrative rules.

There was no evidence the Board was aware of the other inmate's minimum, which passed in July 2017 while the inmate was on medical parole, and a standard parole release hearing was never held. Additionally, it did not appear the PPO was aware the inmate was on medical parole because when the parolee became noncompliant with parole conditions, the PPO requested an arrest warrant and the parolee was brought before the Board for a revocation hearing in December 2017, five months after the parolee's minimum. Neither the Board nor the PPO noted the inmate had been on medical parole when the violation occurred. Rather than reassessing the inmate's suitability for parole release by considering the inmate for standard parole using the ten criteria applicable to all parolees, the Board issued a 90-day sanction and the inmate was released to standard parole supervision in February 2018. Within five days of release for the parole violation, the parolee was rearrested for a second parole violation and given another parole sanction. By not tracking medical parolees and ensuring the PPOs had adequate information to supervise each parolee, the Board could not determine the inmate's suitability for parole and risked public safety.

Recommendations:

We recommend the Board:

- **immediately develop a process to track medical parolees, including any periodic reporting requirements;**
- **establish procedures, compliant with regulations, to review medical parolees who reach their minimum while on medical parole; and**
- **establish a process to address parolees violating parole conditions while on medical parole.**

We also recommend the Board collaborate with the DOC to develop procedures to ensure all entities with legal responsibility over medical parolees have the necessary information and resources to enforce compliance with all parole conditions, including periodic reporting requirements. We also recommend the Board and DOC establish a process to ensure the Board receives the DOC's findings pertaining to periodic medical reports submitted by medical parolees.

We also suggest the Legislature consider the need for legislation specifically allowing the Board and PPOs access to inmate medical, mental health, and substance abuse records which may be relevant for it to make medical parole decisions, and for PPOs to adequately supervise parolees.

Board Response:

We concur. The Board will access the list of medical parolees from the DOC Division of Medical and Forensic Services to track periodic reports and flag minimum parole dates so that the required hearing will be scheduled. The new universal release of information form will allow the Board and

the PPOs to access medical information necessary to assure periodic reporting required by statute so no legislative action is required. See Observation No. 2 for Release of Information reference.

Timeline for the Remediation of Audit Observations

Release of Information Form, Finalized & In Use	*January 2020*
Periodic Status Report Form/Schedule For Medical Parole Cases (that will include minimum parole date tracking)	*January 2020*
Policy, Procedure, Statute & Rule Changes for processes; Remedy Conflict Between Statute and Administrative Rules for Medical Parole Cases	*Ongoing*

DOC Response:

We concur. The remedy in Observation No. 2 addresses this, in part. The Department has modified the content of medical parole letter requests to the NHAPB to further align with statute specific to NH RSA 651-A:10 and will add an alert to CORIS to allow the department to report on this population.

Observation No. 8

Establish Parole Conditions For Medical Parolees

The Board inconsistently imposed special conditions for inmates released on medical parole and parole certificates did not always reflect Board-imposed conditions when they were stipulated. Additionally, in certain cases, special parole conditions were modified after the inmate was released on medical parole without Board review or approval.

The Board was the sole entity statutorily authorized to impose conditions of parole. In addition to standard parole conditions applicable to all parolees, the Board was required to impose special conditions of parole that addressed the "treatment, supervision, and public safety needs presented by each offender." If the Board ordered the release of any inmate, including those released on medical parole, administrative rules required the Executive Assistant to prepare a parole certificate listing those conditions. The Executive Assistant or designee was then required to review the certificate with each inmate prior to their release. Once the inmate was released on parole, there was no formal process in administrative rules, policies, or procedures for the Board to modify conditions, if necessary.

Requirement To Set Special Conditions

The Board was required to utilize six criteria established in its administrative rules to determine appropriate special parole conditions. These included: 1) treatment recommended by the DOC, 2) nature of the inmate's offense, 3) length of incarceration, 4) past performance during community supervision, 5) any other factors that assist in community transition or diminish the parolee's threat to society, and 6) concerns of the victim.

Since at least October 2016, the Board discussed instituting house arrest, with the exception of medical appointments, as a special condition for all inmates granted medical parole since the individual would have otherwise still been incarcerated.

Special Conditions Were Not Imposed On All Medical Parolees

We reviewed all 11 medical parole hearings occurring during SFYs 2017 and 2018 and found special conditions did not always reflect consideration of this criteria and the Board inconsistently imposed the condition of house arrest with the exception of medical appointments. For example, the Board set special conditions for eight of the nine inmates who were granted medical parole at their initial hearing. Of these nine inmates:

- Eight were given special conditions, five of which the Board imposed the condition of house arrest with the exception of medical appointments. Six inmates were provided other special conditions such as no internet access, no contact with specific parties, substance abuse and mental health treatment, or providing the DOC with the results of periodic medical exams.
- One was not given any special conditions for medical parole. The Board stipulated parole conditions would be left to the discretion of the PPO. Statute only allowed the Board to impose conditions of parole, and did not give this authority to the PPO.

No Special Conditions For Medical Parolees Convicted Of Sexual Offenses

In four of the 11 cases, the Board granted and released inmates convicted of sexual offenses on medical parole. Of the four cases:

- One inmate's parole conditions did not include *any* special conditions based on their status as a convicted sex offender. The inmate did not complete any sex offender treatment programming while incarcerated. The Executive Assistant speculated no special conditions were initially added based on the inmate's physical limitations due to illness. However, statute authorized and administrative rules required the Board to periodically review medical report findings to determine whether the inmate still met the criteria for medical parole indicating a medical parolee's health might improve. Additionally, DOC personnel documented and attested parolees had reoffended regardless of their apparent physical state.
- One inmate's parole conditions incorporated recommendations from a committee responsible for providing sex offender-specific requirements to the Board for incorporation into the inmate's parole conditions. Two inmates did not have any committee or sexual offender counselor recommendations.
- One of the two inmates without any committee or sexual offender counselor recommendations had at least one additional parole condition imposed stipulating the inmate comply with sex offender registry requirements. However, the inmate was not given any other special conditions, even though there was a criminal history of other violent and sexual offenses dating back to the 1990s. Additionally, this inmate was not confined to

house arrest even though the current sentence was for an escape charge, and was not mentally or physically incapacitated while on medical parole.

- The other inmate without any committee or counselor recommendation had not had a sex offender evaluation since 2007. The sexual offender treatment program counselor recommended the inmate receive a new mental health and sex offender evaluation *prior* to release to ensure there was no public safety risk. Further, we found an additional note from the sex offender counselor noting they did not support medical parole without this evaluation; however, this note was only in CORIS and not in the information provided to the Board as part of their parole packet. The victim also objected to the inmate's release. While no contact with the victim was stipulated as a special condition, the inmate was released without receiving updated evaluations prior to release, and no evaluations after release were stipulated as a condition of medical parole.

Board-imposed Conditions Were Not Accurately Reflected On Some Parole Certificates

Eight of the nine inmates approved for medical parole were eventually released. Board members had the authority to impose conditions of parole. If parole was granted: 1) the Board stipulated parole conditions at the hearing; 2) Board staff produced a form documenting the hearing results, including Board-imposed conditions; and 3) the Executive Assistant created a final parole certificate prior to the inmate's release for the inmate to review and certify their understanding of all parole conditions. However, we found Board-imposed conditions were not always accurately reflected from the hearing to the final parole certificate.

While we were able to find the hearing results for all eight inmates, we were only able to review recordings for seven hearings. We found two of the eight parole certificates did not match the conditions found in the form documenting the hearing results. Additionally, four of the seven parole certificates did not match all conditions the Board stipulated during the hearing.

Discrepancies were either an issue of: 1) the Board not stipulating certain conditions at the hearing, but special conditions were added to the written results or parole certificate, or 2) the Board specified additional conditions at the hearing, but the conditions were not included on the written results or certificate. Some of these discrepancies included the following:

- One parole certificate required the inmate to clear up an outstanding warrant, but during the hearing the Board verified the warrant had already been cleared.
- In one case, the Board required periodic medical reporting every six months, this was noted as quarterly reporting in the form documenting the results of the hearing, but the parole certificate did not include any reporting requirements.
- The Board prohibited a sex offender from having contact with any minors and also required the inmate be under house arrest, with the exception of medical appointments which could be attended only when accompanied by a trained chaperone. However, the parole certificate only included house arrest, omitting the conditions of no contact with minors, and the exception for the inmate to attend medical appointments with a trained chaperone.
- A sex offender was prohibited from having internet access, but this condition was omitted from the parole certificate.

- The form documenting the results of the hearing indicated an inmate was to return to prison by a specific date, but the certificate omitted this condition.

Some Conditions Modified After Parole

The DOC had a policy whereby the PPO could request to modify conditions after an inmate had been released to parole, but the Board did not have a formal process in administrative rules, policy, or procedure, to modify conditions once the PPO made the request. Modifying conditions was reported and observed as one of the purposes of a review hearing. However, we found two parolees whose parole conditions were modified while on medical parole without receiving a review hearing, or having these conditions considered and approved by the Board members. Specifically:

- One parolee who was required to return to prison by a specific date was granted an extension and was required to submit periodic medical reports during this extension period, even though these reports were not included as part of the original parole conditions. These decisions were made via email exchanges between the Executive Assistant, PPO, and Board Chair two days *after* the inmate was to have already returned to prison, and more than two months after the parolee requested an extension.
- In the other case, the Board did not discuss imposing any parole conditions, even though the inmate was convicted of a sexual offense against a minor. The inmate was released to a nursing home seven months after the initial hearing without any Board conditions addressing the sexual offense or requirement to review the inmate's medical status. One month after release, facility staff informed the Chief PPO through email that the inmate was admitted to the facility without *any* conditions of parole, including the standard conditions for all parolees. Additionally, facility staff stated being unsure whether the inmate was permitted the same off-ground privileges as other nursing facility residents. The PPO was unaware the parolee did not have special parole conditions, and asked facility staff to impose a condition specifying no unsupervised contact with minors. The Executive Assistant acknowledged no additional conditions had been set for the parolee, and also stated no sex offender evaluations or recommendations had been completed prior to medical parole. Nearly two months after release, the PPO was waiting for the Board to stipulate special conditions for the parolee for the inmate's sex offender status. CORIS notes indicated conditions prohibiting contact with minors and requiring a sex offender evaluation were imposed after an email exchange between the PPO, Chief PPO, and the Executive Assistant, without input from any Board members.

  The Board was, however, made aware of the request for off-ground privileges and discussed imposing the equivalent of house arrest with the exception of medical appointments on the parolee, but the Board's discussion was not compliant with the requirements of the *Right-to-Know Law* and the decision was never properly finalized. Regardless, the PPO confirmed with facility staff and informed the parolee of the Board's intent to impose the equivalent of house arrest, two months after the parolee was released.

By not imposing special conditions for medical parole, the Board was noncompliant with its rules and risked releasing inmates without adequate follow-up treatment and supervision requirements. The Board also potentially risked public safety by not considering all criteria required to determine

appropriate parole conditions, omitting certain Board-imposed conditions on the final parole certificate, and not developing a formal process to modify conditions once inmates were released.

Recommendations:

We recommend the Board:

- **utilize established criteria to impose special conditions of parole to address the treatment, supervision, and public safety needs presented by each offender;**
- **consider information available from DOC personnel and stakeholders to determine appropriate special conditions;**
- **formally adopt and consistently apply the Board's condition of house arrest with the exception of medical appointments;**
- **ensure the certificate reflects Board-imposed conditions stipulated at the hearing; and**
- **develop a formal process and establish policies and procedures to modify parole conditions through the proper authorities as necessary.**

Board Response:

We concur. The Board will formalize the house arrest and other special conditions for medical paroles and conduct a training session for all members to assure compliance with statute and rules. The executive assistant will review parole certificates to ensure they accurately reflect conditions imposed by the Board.

The Parole Board always considers information from clinical staff to incorporate into their recommendations for parole conditions, but because CORIS is configured for standard paroles it cannot always capture the unique and special conditions for medical paroles. The Board will confer with IT to improve the hearing results forms and how to transfer them to the parole certificate so that conditions imposed by the Board can be accurately reflected.

Timeline for the Remediation of Audit Observations

Formally define, adopt and apply house arrest provision for Medical Parole cases	*January 2020*
Review & improve hearing results & parole certificate forms	*Ongoing*

PAROLE REVOCATION

The New Hampshire Adult Parole Board (Board) was responsible for paroling prisoners and recommitting those who violated their parole conditions. Department of Corrections (DOC) Probation/Parole Officers (PPO) provided parole supervision and were authorized to arrest parolees for violations of their parole conditions, generally after obtaining an arrest warrant from the Board. If it granted the warrant, State law required the parolee be brought before the Board within 45 days of arrest for a revocation hearing to determine whether parole should be revoked. If the Board found the parolee violated the conditions of parole, it was authorized to recommit the parolee to prison.

In lieu of bringing a parolee back for a revocation hearing, PPOs were statutorily authorized to place parolees in an intermediate sanction program for up to seven days. Additionally, prior to bringing a parolee before the Board for a revocation hearing, PPOs generally used verbal or written warnings, required increased office visits, curfews, or other methods to encourage compliance with parole conditions. DOC policies instructed PPOs to request a warrant after all alternative methods of addressing parolee misconduct failed. While it appeared reasonable for PPOs to address misconduct through these methods before bringing parolees before the Board, we found these alternative sanctions may not have been specifically authorized by statute.

At the parole revocation hearing, the parolee, PPO, and parolee's attorney, if applicable, had the opportunity to present evidence to the three-member hearing panel. If the panel found the parolee violated their parole conditions or State law, and in its judgment should be returned to the custody of the DOC, it must revoke parole. State law required parole violators to serve 90 days before being released back on parole. However, the Board was authorized to impose a longer or shorter period of re-incarceration if the parolee met certain statutory criteria. We found the Board imposed sanctions of less than 90 days for parolees who did not appear to meet the requirements in statute.

State law also required an attorney of the Board be present at all revocation hearings; however, the role of attorney was not explicitly defined. To fulfill this requirement, the Board generally utilized its own attorney members; however, it did not have a process to verify they were practicing when serving in this capacity. Additionally, the Board did not document who served in this capacity for each revocation hearing, hindering our ability to verify this statutory requirement was met.

Observation No. 9

Review Authority To Impose Alternative Sanctions

RSA 651-A:16-a allowed the DOC to place parolees in an intermediate sanction in lieu of bringing them before the Board for a revocation hearing. However, PPOs often used alternative sanctions to address parolee misconduct, which did not appear to have been clearly authorized by statute. We also found PPOs inconsistently used these alternative sanctions, and did not always include a list of the sanctions used when requesting a warrant from the Board.

According to the DOC, Rule 29 (f) 12 of the New Hampshire Rules of Criminal Procedures provided PPOs with the authority to impose other special conditions. However, we found Rule 29 (f) 12 only addressed those serving probation and outlined the "terms and conditions of probation…." It did not appear to address those who had been released on parole. Additionally, the rule only allowed the PPO to impose nine specific conditions on a probationer; it did not include all the sanctions in the DOC's graduated sanctions schedule.

Alternative Sanctions May Not Be Authorized By Statute

RSA 504:4 allowed PPOs to immediately arrest a parolee without requesting a warrant from the Board if the PPO had reason to believe the parolee committed a new criminal offense or conducted themselves as a menace to society, or if there was probable cause to believe the parolee would abscond or commit a new crime if not immediately arrested. It also required the PPO request an arrest warrant from the Board if the parolee violated the conditions of parole, but the actions did not meet the criteria for immediate arrest. Once arrested, the parolee would be brought before the Board for a hearing to determine whether parole should be revoked.

However, RSA 651-A:16-a allowed the DOC Commissioner to establish a seven-day intermediate sanction, located in a halfway house facility, in which PPOs could voluntarily place a parolee instead of bringing them before the Board for a parole revocation hearing. Statute defined intermediate sanction as "a community-based day or residential program that is designed for use as a swift and certain sanction for a parole violation, in lieu of parole revocation." No other alternative sanctions appeared to be specifically authorized by RSA 651-A, RSA 504, or Rule 29.

PPOs Used Alternative Sanctions To Address Parolee Misconduct

DOC policies and procedures established a graduated sanction schedule, corresponding to the parolee's risk level, to address noncompliant behavior before requesting a warrant from the Board. These sanctions included:

- verbal and written warnings,
- increasing contact and reporting frequency,
- community service,
- electronic monitoring,
- a seven-day sanction program (i.e., the intermediate sanction authorized by statute),
- referrals to treatment or other programs,
- requesting modifications to parole conditions or curfew, and
- a review hearing.

DOC policies also required PPOs to exhaust all available alternative sanctions to address parolee misconduct prior to requesting a warrant from the Board.

According to Division of Field Services management, RSA 504-A:12 required PPOs to provide supervision to persons placed on parole and monitor their behavior to ensure compliance with parole conditions. Additionally, the certificate outlining parole conditions required parolees to comply with all PPO instructions. PPOs strived to supervise parolees in the community until it was

no longer safe to do so. Alternative sanctions played an important part in this process and were used for noncompliance issues which did not rise to the level of requesting a warrant. Review hearings were also used to bring the parolee before the Board to warn them they could be incarcerated if compliance issues continued. Reportedly, the Department has shifted away from immediately returning parolees to prison for any infraction of their parole conditions in favor of allowing opportunities to correct behavior and increase the chance of success on parole.

To standardize this practice, the DOC created a checklist, at the request of the Board, to outline all sanctions a PPO used while the parolee was on supervision. The checklist would be submitted to the Board with the request for a warrant. Of the 50 revocation files we reviewed, we found PPOs used alternative sanctions in 25 cases to address parolee noncompliance prior to requesting a warrant from the Board. Although it may have been appropriate for PPOs to use sanctions to address some issues instead of bringing parolees before the Board for every instance of noncompliance, these alternative sanctions did not appear to be authorized.

Sanctions Were Inconsistently Applied

Even though the DOC established a checklist, we found alternative sanctions were sometimes inconsistently applied. We found PPOs sometimes used sanctions to address noncompliance before requesting a warrant to bring the parolee in for a revocation hearing, while in other cases the PPO immediately requested a warrant. For example, one parolee's sanctions over a year included: increased reporting frequency, verbal warnings, substance abuse counseling, stricter curfew, and a warning for electronic monitoring or a seven-day sanction at the halfway house. In contrast, another parolee failed to report for office supervision twice, and a warrant was requested for the parolee's arrest based on failure to report to the PPO as directed. This parolee had been on parole for less than one month. While we acknowledge some parolees and specific circumstances may justify swifter action, we found PPOs were inconsistent in applying sanctions.

Board Was Not Always Made Aware Of Sanctions Used

DOC policies and procedures required PPOs to submit a supporting parole summary to the Board when requesting a warrant. PPOs could have outlined the sanctions they used within the narrative of the supporting summary, or submitted the checklist describing the sanctions used. Board members stated they usually received the summary; however, the checklist of alternative sanctions was not always provided. Additionally, one Board member stated not knowing about the seven-day intermediate sanction program and stated the Board was not always informed of the sanctions used prior to requesting a warrant.

Recommendations:

We recommend the Board and DOC seek clarification from the Department of Justice (DOJ) on whether alternative sanctions, other than a seven-day community based or residential sanction, are permitted. If it determines other sanctions are not allowable, the Board and DOC may want to petition the Legislature to permit alternative sanctions other than those currently allowed.

Once clarified, we recommend the Board collaborate with the DOC to review, amend if necessary, and formally adopt a graduated sanction schedule. The Board and DOC should also collaborate to establish a process to ensure alternative sanctions are documented and presented to the Board for its review when requesting a warrant for actions not meeting the criteria for immediate arrest.

Board Response:

We concur. We will seek guidance from the DOJ about alternative sanctions. PPOs typically document the use of alternative sanctions in the summary or on the sanctions checklist if they are imposed.

Timeline for the Remediation of Audit Observations

Consultation with legal counsel about alternative sanctions	*May 2019*
Discussion with DOC about consistently including alternative sanction checklist in parole violation information presented to Board	*April 2019*

DOC Response:

We concur, in part. The NHDOC adheres to best practices in the supervision of parolees, which are outlined in policy and procedure 5.06 and 5.51. The use of alternative sanctions is a fundamental element of community supervision. The NHDOC believes the New Hampshire Rules of Criminal Procedures, Rule 29 (f) 12 provides authority for officers to impose other special conditions, however we will confer with legal counsel to see if additional statutory language is needed. The NHDOC will work with the NHAPB to ensure the existing reporting format provides all needed information and modify accordingly.

Observation No. 10

Ensure Parole Revocation Sanctions Are Compliant With Statute

State law required an inmate who violated parole to serve 90 days in prison before being released back on parole. The Board was authorized to impose a shorter period if it was the first parole violation; the crime was not a sexual offense, an offense against a child, or a violent offense; the parole violation was not substantially related to the original offense or offending pattern; and the Board determined a shorter period would aid rehabilitation. The Board could not impose a period of less than 90 days unless *all* of these criteria were met.

We found the Board imposed some sanctions shorter than 90 days during the audit period, even though all criteria were not met. Specifically, we found the following:

- Two instances where a first-time parole violator was given less than 90 days, even though one charge included in the arrest warrant – a drug charge – was related to the parolee's offense or offending pattern. In both instances, the drug charge was withdrawn during the hearing to allow

a sanction of less than 90 days so the inmate could enter into a residential treatment facility. Board members acknowledged allowing these charges to be withdrawn was not fully compliant with statutory requirements.

- A second-time parole violator was given 90 days with the entire time suspended upon entry into a residential treatment program.
- A first-time parole violator was given 90 days with the entire time suspended upon entry into a residential treatment program. The violation, drug use and leaving a drug treatment program before completion, was related to the parolee's offending pattern.
- A first-time parole violator was given 90 days with the entire time suspended upon approval of a home plan. The violation was related to the original offense as the parolee was in prison on an escape charge and had violated parole by absconding.

In September 2018, the law was amended to allow the Board to impose a term of less than 90 days for parole violators who enter and successfully complete a residential substance abuse treatment program. In November, the Board was still in the process of developing policies to implement the law. However, during the audit period, the Board did not appear to have the authority to impose less than 90 days in the above circumstances.

Recommendation:

We recommend the Board ensure all parole revocation sanctions are in compliance with statutory guidelines. This should include ensuring only cases presenting circumstances allowable by statute are given sanctions shorter than 90 days.

Board Response:

We concur. All members have been reminded of the statutory provisions for recommittals. The Board will also consult with DOC Field Services and the Public Defenders Office to discuss the possibility of having the PPO or defense counsel cite the specific statutory authority for deviation from the standard 90-day sanction.

Timeline for the Remediation of Audit Observations

Discussion with DOC and Public Defender about citing statutory authority for their recommended sanction	*January 2020*

Observation No. 11

Ensure Presence Of Attorney Of The Board Is Properly Documented

Statute required an attorney of the Board be present at all revocation hearings. The Board utilized Board members who were attorneys or attorneys from the DOJ to fulfill this requirement. However, their presence was not documented in the files, hindering us from verifying an attorney of the Board was actually present. Additionally, although statute required the presence of an attorney, it did not outline their role during a revocation hearing.

Person Serving As Attorney Of The Board Was Not Clearly Documented

Board staff documented each revocation hearing through an audio recording and a form documenting the results of the hearing. The form captured the names of the panel members present at each hearing. However, it did not capture the name of the Board member who acted in the capacity of attorney of the Board. Audio recordings of revocation hearings we listened to also did not indicate who fulfilled this requirement. When no Board member was available to fulfill this requirement, the Board reportedly used attorneys from the DOJ; however, their presence was also not documented during the hearing or on the form documenting the hearing results.

To determine whether a Board member acted as the attorney of the Board during each hearing, we reviewed the names of Board members at each revocation hearing and compared them to members that Board staff told us were attorneys. Of the 50 revocation hearings we reviewed, we found nine cases (18 percent) where we could not determine whether any Board members sitting on a revocation hearing panel were attorneys. An attorney from the DOJ may have been present at these hearings; however, we had no way to verify this.

No Process To Determine Whether Attorneys Serving In This Capacity Were In Active Status At The Time

When Board members were used to fulfill the requirement, there was no process to determine whether they were in active status at the time. Attorneys in active status were required by New Hampshire Supreme Court Rules to obtain a minimum of 720 minutes of continuing legal education credits annually to strengthen their professional skills and enhance the quality of legal services rendered. We reviewed resumes and other documents filed with the Secretary of State's Office at the time members were appointed, and were not able to verify whether two Board members were in active status during their tenure on the Board. Of the 41 revocation hearings where a Board member could have served in the capacity of Board attorney, there were ten (24 percent) where we could not determine whether the attorney was active at the time.

Role Of Attorney Of The Board Not Defined

The role of attorney of the Board was not defined in statute and the Board had no formal policies to establish their duties during a revocation hearing. Board members we spoke with were unclear about the attorney's responsibilities and questioned whether the attorney should be counseling for the Board, the inmate, or both. In one instance, a Board member alluded to occasions where they may have given advice to inmates when they presided over hearings. Moreover, statute also did not establish whether attorneys serving in this capacity should have specific skills or experience, including courtroom experience.

Recommendations:

We recommend the Board develop a process to ensure Board members or DOJ attorneys serving in the capacity of attorney of the Board during revocation hearings are documented in the hearing and results of the hearing.

We also recommend the Board seek clarification from the Legislature regarding the role of the attorney of the Board during revocation hearings and whether the attorney should be in active status. Consideration should be given to what specific skills or experience the attorney of the Board should possess.

Board Response:

We concur. Attorney members of the Board are now identified as such with the suffix "Esq." in the minutes of revocation hearings, and when a lawyer from the DOJ serves this function, his presence is noted on the record. Even if through error the presence of an attorney was not documented, we can state with absolute confidence that the Board has never conducted a revocation hearing in the absence of an attorney of the Board. The statute does not require the attorney of the Board to be an attorney in active status. Indeed, we have had a former member of the NH Supreme Court serve on our Board. Ideally, we should have a lawyer with criminal justice experience. The Board will clarification from the Legislature about the role and status of the attorney during revocation hearings.

Timeline for the Remediation of Audit Observations

Documenting who acted as attorney of the Board at revocation hearings	*Completed*
Clarify with Legislature the role of the attorney of the Board	*Ongoing*

Observation No. 12

Establish Program To Re-engage Parole Violators In Their Parole Plan

RSA 651-A:19, II required parolees recommitted to prison for a parole violation be provided access to "focused, evidence-based programming aimed at reengaging parolees in their parole plan." If they did not meaningfully participate in the required programming, statute required the parolee be brought before the Board to determine whether a longer term of recommittal was warranted. However, the DOC did not have a program specifically aimed at re-engaging parole violators in their parole plan, nor were parole violators brought before the Board to determine whether a longer period of recommittal was appropriate.

According to a DOC official, it would be difficult to design a program to accommodate the large number of parole violators coming into the prison daily. Additionally, we noted parole violators were required to receive a hearing within 45 days of arrest and approximately half were sentenced to a 90-day sanction from the date of arrest, thus already serving part of their sanction before being sentenced by the Board. According to the DOC official, any program would need to be flexible enough to allow parole violators to enter or leave at any point, and still cover all of the program's components.

While no program targeting parole violators existed, parole violators worked with their Correctional counselor/Case Manager to establish a re-entry plan to re-engage them with community providers and services upon release. Parole violators were also permitted to enroll in

most programs offered by the DOC; however, depending on program length and timing, they may not have been able to participate. For example, some programs were for a fixed duration which could be longer than most periods of recommittal, preventing them from being able to meaningfully participate.

Recommendations:

We recommend the Board and DOC seek Legislative changes to amend statute to allow more flexibility in re-engaging parolees in their parole plan. If it is not successful in amending statute, we recommend the DOC comply with statute and establish the required programming as best as it can, and the Board ensure those not participating in the program, once established, are brought before the Board for a hearing.

Board Response:

We concur with the recommendation that the DOC either comply with the law or seek changes via legislation. This is not the responsibility of the parole Board. The unavailability of programs for parole violators behind the walls often results in the Board's decision to impose a shorter sanction so that the parolee can participate in rehabilitative programs in the community.

In the absence of a parole re-engagement program, the Board will seek legislation to modify the current 90-day sanction with mandatory release, to require that parolees have an acceptable housing plan prior to release.

Timeline for the Remediation of Audit Observations

Statutory changes eliminating mandatory release and requiring acceptable housing plans	*January 2020*

DOC Response:

The NHDOC concurs in part. The NHDOC currently has programs and services to offer parole violators that would re-engage them in their parole plans. The NHDOC does not have programming available that would completely separate parole violators while engaging in these programs. Parole violators are violated for a variety of reasons, and need a variety of programming in order to address the specific needs of each individual. Creating programs specifically for parole violators would not only be cost prohibitive to the NHDOC, but counterproductive in the goal of reengaging individuals in their parole plans. The NHDOC will examine amended legislative language to allow more flexibility with a parole violator program, and also enhance our internal referral process to engage as many parolees as possible. The mandatory parole revocation sanction (presumptive 90 days) mitigates our ability to require or incentivize participation in the program.

REDUCTION OF MAXIMUM SENTENCE

State law authorized the New Hampshire Adult Parole Board (Board) to grant a reduction to a parolee's maximum sentence equal to one-third of the time on parole. Probation/Parole Officers (PPOs) submitted a petition to the Board on behalf of the parolee for its consideration. In making its decision, statute required the Board to consider the parolee's conduct while on supervision, seriousness of the offense, amount of restitution owed, and any information provided by the victim. PPOs submitted a petition, after review by their immediate supervisor, to the Board when parolees under their supervision met the criteria outlined in Department of Corrections (DOC) policies.

We found the Board did not have a formal process or a standard set of criteria for evaluating these petitions. Instead, each Board member developed their own criteria for evaluating petitions, leading to inconsistencies. To exacerbate the issue, we found some petitions omitted crucial information or contained information which conflicted with records found in the DOC's offender management system, CORIS.

Observation No. 13

Develop A Process For Reviewing Petitions For Reduction Of Maximum Sentences

The Board had no administrative rules, policies, or formal process for reviewing petitions for reduction of maximum sentences. Instead, members used informal criteria, which were not codified in administrative rules or Board policies, to evaluate petitions.

No Formal Process To Consider Petitions For the Reduction of Maximum Sentences

Reportedly, the Board reviewed petitions as time allowed between release or revocation hearings. Neither the parolee petitioning for a reduction of their maximum sentence nor the PPO filing the petition on their behalf was present to answer Board questions. In at least one instance, a parolee whose petition was denied, had asked the PPO to request a hearing before the Board to discuss the reasons for denial. As of September 2018, the parolee's request had not been addressed. We found occasionally the Board accepted verbal input from the victim or someone from the Victim Services Bureau; however, no other parties were present when this occurred.

Prior to January 2018, names of parolees petitioning for a reduction were not included on the hearing schedules. According to Division of Field Services management, before the petitions were added to the hearing schedules, they were not sure how or when they were being reviewed. Victim Services Bureau personnel also stated it was difficult for victims or their representatives to provide input as they were not always aware of when the Board would review these petitions if they were not placed on the schedule.

One Board member reported being unsure how many members were required to approve these petitions, although we saw three member names written on the petitions during our file review. Unlike for parole release and revocation hearings where three members were required as part of a

hearing panel, there were no requirements in statute or administrative rules regarding how many members should decide on a petition.

No Rules Or Policies For Considering Petitions For Reduction Of Maximum Sentences

Statute outlined four factors the Board was required to consider when reviewing petitions for reduction of maximum sentences, including the parolee's conduct while on supervision, the seriousness of the offense, the amount of restitution owed, and any information provided by the victim. However, the Board did not have any administrative rules or written policies to address the process, or how each factor should be considered. The DOC adopted a policy for when PPOs could recommend a parolee to the Board for a reduction of their maximum sentence which included factors such as reporting frequency, efforts towards satisfying financial obligations including restitution and fees, and compliance with parole conditions.

Additionally, the final documents showing whether the petition was approved or denied did not include Board members' signatures. Instead, the names of Board members who purportedly reviewed the petition were all written on the form in the same handwriting. Of the 36 finalized petitions we reviewed, none contained Board members' signatures. Without clear indication of which Board members reviewed the petitions, the Board cannot document these petitions were properly granted.

Inconsistent Application Of Informal Policies

While the Board did not have any administrative rules or policies regarding how petitions should be considered, Board members reportedly used unwritten criteria to make decisions. However, we found these criteria were also inconsistently applied.

Reporting Frequency

The Board did not formally establish criteria for how often a parolee was required to report to their PPO before being granted a reduction of their maximum sentence. Board members stated they preferred parolees to be reporting every six months or less often before granting petitions. However, the Board inconsistently applied its own six-month reporting guideline. Of the 37 petitions we reviewed that the Board granted, 20 (54 percent) petitions showed the parolee had been reporting more often than every six months.

Time Left On Maximum Sentence

Statute authorized the Board to grant petitions to allow for a reduction of time "equal to 1/3 of the period of time during which the parolee is at liberty on said permit." However, two Board members reported they have denied petitions when the parolee was anywhere from two to four years away from their maximum, citing it was too much time taken off their maximum sentence. According to statute, eligibility was determined by a calculation of the individual's time on parole, not by the number of years left on their sentence. Depending on the duration of the sentence and the individual's time on parole, there was the possibility someone could have several years left until their maximum, but still meet the statutory requirements. For example, an inmate serving 10 to 20

years who was paroled after 10 years would be eligible for a reduction of their maximum at 16 years 8 months, allowing them to reduce three years two months off their sentence.

Restitution And Other Financial Obligations

The Board was statutorily required to consider the amount of restitution the parolee owed; however, members did not appear to agree on the threshold at which they would grant a petition. For example, while one Board member reportedly required the parolee to have paid at least half the amount owed before approving a petition, another reported denying petitions unless *all* of the restitution was paid. Of the 45 petitions for reduction of maximum sentences we reviewed, we found three instances where the parolee still owed restitution at the time the petition was filed. Two of these petitions were granted with one parolee owing over $13,500 and the other parolee owing just over $200. In the third case, the reason for denial was cited as "restitution owed." The parolee owed approximately $4,300.

Further, according to statute, the only financial factor the Board was required to consider was restitution. However, we found at least one petition which was denied due to the amount of fines and fees owed.

Recommendations:

We recommend the Board consult with its Department of Justice representative to determine whether hearings would be appropriate when considering petitions for reduction of maximum sentences. If the Board deems hearings would be appropriate, determine who should be present for the hearings and how many Board members are required to take action on a petition.

We also recommend the Board develop a process for handling petitions for reduction of maximum sentences. The Board should collaborate with the DOC to determine whether the DOC's current policy could be used to guide the Board's process, and whether the DOC's policy aligns with the Board's expectation of who should be recommended for a reduction of their maximum sentence. The Board's process should include:

- **outlining criteria for reviewing petitions and ensuring they are consistently applied;**
- **ensuring all criteria used to make decisions are adopted as formal Board policy; and**
- **ensuring petitions are signed by Board members reviewing them.**

Once developed, the Board should codify the process in administrative rules and, if necessary, write corresponding policies to ensure consistent review of petitions.

Board Response:

We concur. Even before the audit recommendations, the Board recognized the need to formalize the reduction of maximum procedure. In fact, it was the Board that requested even the minimal criteria outlined in the statute. At our January administrative meeting we agreed to collaborate with the PPOs on a new form that will provide more information about housing, employment,

reporting schedule, and compliance with all parole conditions. We have also agreed that the parolee and PPO will appear before a three-member panel of Board members. The Board will also work with IT to develop a hearing results form for the reduction of maximum sentence hearings that will require the names of the participating Board members to be selected on the form, as is done on all other hearing results forms and parole certificates.

Timeline for the Remediation of Audit Observations

Develop a standardized reduction of maximum sentence form and hearing process	*January 2020*
Design a hearing results form for reduction of maximum sentence hearings	*January 2020*

DOC Response:

The NHDOC concurs. The NHDOC currently provides this information to the NHAPB in a format that was developed in collaboration with the NHAPB. The NHDOC will work with the Board to see if the existing NHDOC policy 5.64 or reporting format meet the Board's criteria and expectation, and amend accordingly.

Observation No. 14

Ensure Petitions For Reduction Of Maximum Sentences Are Accurate And Complete

PPOs filed petitions for the reduction of maximum sentences on behalf of parolees and submitted them to the Board for review. However, we found some petitions contained incomplete information, omitted some information, or contained information which conflicted with that found in CORIS.

Parolee Compliance Issues Were Not Always Included In The Petitions

State law required the Board to consider the parolee's conduct while under supervision as a factor in determining whether to grant or deny a petition. PPOs generally noted any compliance issues the parolee may have had on the petition. However, we found some petitions where the parolee had compliance issues which the PPO did not include in the petition. Of the 45 petitions we reviewed we found seven where notes in CORIS indicated the parolee had compliance issues, but the PPO noted the parolee did not have any. Specifically:

- three parolees who had their parole revoked, two of whom were revoked multiple times;
- one parolee whom the PPO noted had been of good behavior, but CORIS notes indicated the parolee had been arrested multiple times for drug-related offenses and had a suspended sentence imposed;
- one parolee who was arrested and charged by local police four months before the petition was filed, but there were no indications in CORIS that the issue had been resolved;
- one parolee who failed to report to the PPO two out of the nine months prior to filing their petition; and

- one parolee whom the PPO imposed a 60-day requirement to report more frequently due to supervision issues.

The Board granted five of these seven petitions, including two of the parolees whose parole had been revoked.

Additionally, we found one case where the PPO reported the parolee was compliant with all parole conditions with the exception of a warning for minor drug use "in the past." However, our review of CORIS indicated the parolee, who was convicted of drug possession, struggled with drug use throughout supervision including overdosing at least once. CORIS notes from the three months prior to the petition being filed showed the parolee had admitted to using drugs several times per week, and had admitted to using three days before the petition was filed. The Board granted this petition not knowing the parolee's ongoing struggles with drug addiction.

Petitions Did Not Always Contain All Offense Information

State law required the Board to consider the seriousness of the parolee's offense when reviewing petitions. The petition included a section for PPOs to note the parolee's offense; however, we found in seven cases the PPO did not include the offense on the petition, or we found CORIS indicated a more serious offense than that reported on the petition. The Board granted six of these petitions.

Frequency Of Reporting Was More Often Than Noted On Petitions

As discussed in Observation No. 13, the Board reportedly preferred parolees to report every six months or less before granting a petition. Although the parolee's reporting schedule was noted on the petitions, we found the information was not always accurate. Of the 45 petitions we reviewed, nine parolees (20 percent) were reporting more frequently than noted on the petition.

Board members stated the frequency of reporting was an indicator of whether or not a parolee was ready to be released from supervision. However, the form used did not include how long the parolee had been on the reporting schedule. We found nine cases where the parolee had recently been placed on the particular reporting frequency noted on the petitions. The Board stated having more information regarding how long the parolee had been on the same reporting schedule would be beneficial for decision-making.

Some Signatures Not Included On Petitions

DOC policy required the PPO's immediate supervisor review and concur with the request prior to submitting it to the Board. In some cases, petitions were missing signatures from either the PPO who filed them or the Chief PPO who approved the petition before they were submitted to the Board. Of the 45 petitions we reviewed, we found three petitions (seven percent) were missing a signature from the PPO, and six petitions (13 percent) were missing a signature from the Chief PPO. Without signatures from either the PPO or the Chief PPO, the Board could not determine whether the appropriate Division of Field Services personnel authorized the filing of a petition before it was submitted.

No Process To Verify Accuracy Of Information On Petitions

The Board lacked a process for verifying the information included on petitions was accurate. Board members reported petitions consisted of only a one-page form with no other information, and members assumed the information to be accurate and complete. The exception was petitions for parolees supervised out-of-State, which generally included an additional summary. Board staff did not provide any additional information, such as supervision notes from CORIS, to the Board to evaluate the petitions or to verify their accuracy.

Recommendations:

We recommend the Board:

- **develop a process for verifying information provided on petitions for the reduction of maximum sentences are accurate; and**
- **ensure information provided on petitions reflect all factors the Board will use to evaluate the petitions.**

We also recommend the DOC ensure petitions are properly reviewed for accuracy and completeness, and the review is properly documented, before submission to the Board.

Board Response:

We concur. The new procedure for conducting reduction of maximum hearings will require the attendance of the PPO as well as an application containing much more detailed information to allow us to properly evaluate such requests. Because of limited staff resources, however, it is impractical to require the Board to verify the accuracy of information provided to them on petitions for the reduction of maximum sentences. We depend on the professionalism and integrity of the PPO providing the information on these petition because the Parole Board staff is unable to devote the time to fact check their representations.

Timeline for the Remediation of Audit Observations

See Observation No. 13.

DOC Response:

We concur. This is addressed in Observation No. 13's response.

ADMINISTRATIVE FUNCTIONS

For any organization or agency to be efficient and effective, it must establish a mission with corresponding goals and objectives, as well as an internal control system to reasonably assure objectives will be achieved. Internal control refers to the activities and processes within an organization such as internal practices and written plans, policies, and procedures. Management is responsible for monitoring and evaluating control activities while staff implement and carry out the daily operations associated with those activities and processes. In addition to maintaining a level of performance related to agency objectives, control activities must adhere to applicable statutes and administrative rules to ensure compliance throughout its operations.

Internal control deficiencies are a result of absent control activities or processes, or when a control is not properly designed to meet the objective. The New Hampshire Adult Parole Board (Board) lacked formal goals, objectives, and a comprehensive internal control system resulting in ineffective and inefficient operations as well as noncompliance with certain regulations.

Lack Of Administrative Rules, Policies, And Procedures

The Legislature established parole as a means of supervising and rehabilitating offenders without continued incarceration. The Legislature also intended the "policies, procedures, and actions of the adult parole board and the department of corrections [DOC] relative to the administration of this system emphasize the need to protect the public from criminal acts by parolees." Documentation of an entity's activities through formally adopted policies and procedures is essential to implementing and overseeing an effective internal control system as it provides consistency and transparency in decision-making. In addition to internal policies and procedures, RSA 541-A, the *New Hampshire Administrative Procedure Act*, required the Board to promulgate administrative rules for any policy it established to interpret statute or that affected individuals outside of the Board.

We found the Board lacked comprehensive written policies and procedures for Board members and staff leading to operational and administrative practices being implemented inconsistently, informal decision-making, and noncompliance with some regulations pertaining to administrative functions and Board operations. The Board also lacked policies and procedures clarifying the expectations and relationship between the DOC and the Board, facilitating inconsistency within related functions between the two entities. Further, the Board did not promulgate administrative rules for some requirements binding on persons other than its own personnel and lacked rules to interpret or implement other processes.

Observation No. 15

Develop Comprehensive Staff Policies And Procedures

Board staff lacked written policies and had minimal procedures for operational tasks. Internal control activities are the policies, procedures, and processes which ensure responsibilities and

duties are carried out. Policies and procedures are essential to achieve program objectives efficiently and effectively and include activities to mitigate risk such as approvals, authorizations, reviews, orientation and training, documentation, and production of records.

While the Executive Assistant provided documents outlining limited procedures related to collating and handling parole packets, creating digital recordings, receiving certain fees, and obtaining certain court records, the procedures did not encompass the full responsibilities of Board staff and were not sufficient to ensure efficient and effective operations, especially during periods of staff turnover. Lack of policies and procedures led to staff uncertainty of expected responsibilities and relationship with the DOC, data entry inaccuracies, and noncompliance with certain regulations.

Board staff was heavily reliant on institutional knowledge to carry out operations and would have been unable to maintain the current level of functions and compliance if an individual in a key position left the organization.

Board And DOC Relationship Was Unclear

Per statute, the Board was administratively attached to the DOC for budgetary, recordkeeping, and clerical assistance, but the DOC Commissioner had no administrative authority over the Board, Executive Assistant, or its duties. In our 1992 *Prison Expansion Performance Audit Report*, we found miscommunication between Board members, staff, and the DOC contributed to unclear expectations of responsibilities between the entities. We recommended the Board adopt a written mission statement with written policies and procedures regarding the daily administrative routine of the Board and Executive Assistant and how those entities fit into the overall correctional system.

The finding was never fully resolved, policies and procedures had not been developed, and Board staff and stakeholders indicated expectations and responsibilities remained unclear. Several instances regarding uncertainty between Board staff and DOC during the current audit included:

- the Board was ultimately responsible for submitting its own budget and could request assistance from the DOC, but the Executive Assistant was unsure as to whether Board staff positions were budgeted within the DOC or the Board;
- Board staff supplemental job descriptions encompassed responsibilities related to the parole process and Board, but the Board members and Executive Assistant had concerns as to who would draft policies as it was their understanding some staff had responsibilities under the DOC and drafting Board policies would conflict with those responsibilities; and
- at least one staff position had been transferred prior to the audit period from the DOC to the Board, and while the supplemental job description and budget reflected the transfer, it had not been reclassified to reflect the current job duties leading the individual to question whether other responsibilities remained with the DOC.

Data Entry Inaccuracies

The Board staff lacked policies and procedures for data input and monitoring to ensure accurate data was retained. Effective policies and procedures ensure data accuracy by incorporating data collection and handling processes, periodic checks for data entry errors, and instituting access controls for files and programs. Although we did not undertake a full review of Board data, we found the following data inaccuracies during a sample review of parole release, medical parole, and revocation hearings:

- at least six out of 50 revocation hearings and three out of 41 parole release hearings occurred on a different date than what was reflected in the data provided by Board staff;
- at least 18 out of 37 revocation hearings and three out of 34 parole release hearings with accompanying recordings had a different file number in the system for the electronic verbatim recording than what was listed on the paper template provided to inmates and stored within the inmate's file; and
- at least seven out of 11 medical parole hearings had data inaccuracies either with the hearing date or with the electronic recording file number.

Accurate data was critical for collection and analysis in order for the Board to monitor performance outcomes and supplement Board member decisions, as discussed in No. 3 and No. 26. Without policies and procedures to ensure accurate data, the Board would be unable to determine whether operations were efficient and effective or identify deficiencies and make improvements.

Noncompliance With Regulations

Although not formally delegated, Board members reportedly relied on staff to execute certain tasks. However, there were no written policies and procedures with the appropriate amount of detail to allow Board staff to effectively implement and carry out Board expectations and operations, leading to noncompliance with certain regulations. For example:

- although statutorily a Board function, the Executive Assistant waived supervision fees without further Board approval or clear written guidance from the Board as to what would constitute appropriate reasons for waiving supervision fees, as we discuss in Observation No. 23;
- Board and parole records were not adequately maintained and were lost or destroyed without the Executive Assistant's knowledge before the statutory four-year retention period, as we discuss in Observation No. 24;
- notice to certain stakeholders was required prior to conducting any hearings, but the Board only considered certain hearings applicable to this requirement, and Board staff did not document the process for providing required notices to ensure compliance with statute, as discussed in Observations No. 21 and No. 22;
- statute and administrative rules required Board members consider specific criteria for parole release, revocations, medical parole, and maximum reduction requests, but certain information provided to members by Board staff was inaccurate or not included due to information being unavailable, as we discuss in Observations No. 1, No. 2, No. 3, No. 5, No. 6, and No. 14; and

- although parole records were confidential under statute and administrative rules, certain parole records were discussed in public meetings or provided to members of the public upon request, as discussed in Observations No. 18 and No. 19.

Recommendations:

We recommend the Board develop and adopt a comprehensive policy and procedure manual, with sufficient detail to ensure efficient and effective implementation, for all administrative operations by:

- **creating clear reporting relationships, including establishing an organizational chart and reclassifying positions or requesting the Division of Personnel modify supplemental job descriptions as appropriate;**
- **delegating duties and responsibilities from the Board to Board staff, including establishing responsibilities over data entry, data collection, and certain regulatory requirements; and**
- **monitoring practices and periodically modifying procedures as necessary.**

We also recommend the Board collaborate with the DOC to develop written policies outlining expectations, responsibilities, and the relationship between the two entities.

Board Response:

We concur that we should develop a comprehensive procedural manual for administrative operations. This is a huge task and current staff have neither the time nor expertise to undertake all that would be involved. We will need additional qualified staff or significant help from DOC to accomplish this. In the meantime we have started to implement the audit observations that can be easily accomplished such as a records retention policy, and ensuring the accuracy of data entry.

It would be advantageous to have a clearer understanding of the kind of support the Board can expect from the DOC to which we are administratively attached. We have received valuable support from the HR department, but have been unsuccessful in getting the assistance we need in the area of IT, administrative rulemaking, and budget preparation.

Timeline for the Remediation of Audit Observations

Policy, Procedure, Administrative Rules and Statutory changes for Parole Board Operations	*When additional qualified staff are hired*

DOC Response:

We concur. The NHDOC will collaborate with the NHAPB to develop policies that ensure our relationship and expectations are clear and consistent within our respective statutory roles.

Observation No. 16

Develop Comprehensive Member Policies And Procedures

In establishing parole, the Legislature intended to establish a method of supervising and rehabilitating offenders without continued incarceration. Its intent was that Board and DOC policies, procedures, and actions would emphasize the need to protect the public from criminal acts by parolees. While the DOC had extensive policies and procedures, some of which related to the parole process, the Board had no comprehensive written policies and procedures, contributing to inconsistent practices and noncompliance with certain regulations.

In response to our request for policies and procedures, the Board provided: 1) a memo citing a policy supporting the continued use of the drug court program, but no policy was provided in writing; 2) a policy from December 2015 specifying victim impact statements would be read at the hearings and retained with the Victim Services Bureau; and 3) a Board member handbook, last revised in September 2017, which was described as a guide to give new members a basic understanding of how the corrections system worked and the Board's role within it. All other practices the Board considered "policies" were decisions made during administrative meetings; however, there were no formal motions or votes to adopt these policies through at least August 2018, and they were never finalized into a written document with clear procedures as to how to implement these decisions. We identified the following areas where the absence of clearly written policies and procedures may have facilitated inconsistency and noncompliance.

Formal Orientation And Training

There was no formal orientation and training program for new Board members. Under RSA 20-B, all State regulatory boards, commissions, advisory boards, advisory committees, and authorities were statutorily required to provide orientation information to new members. Orientation information was to include pertinent information such as procedures, contact information, meeting schedules, and any other information deemed relevant to fulfill Board responsibilities. Informally, new Board member training consisted of: 1) providing a binder containing the Board member handbook, relevant statutes and court cases, acronyms, and contact information; 2) meeting with another member to review examples of parole and revocation packets as well as a parole certificate; and 3) observing several hearings prior to being scheduled to sit on a panel. However, other pertinent information was not included or readily available to review such as other statutes and corresponding statutory guidance relevant to the Board and parole process, including *RSA 504-A Probationers and Parolees, RSA 91-A Access to Governmental Records and Meetings, RSA 541-A Administrative Procedure Act,* and *Administrative Rule Cor 100-400.* By not including other pertinent regulations the Board did not ensure members were fully aware of all laws affecting the Board, contributing to noncompliance in the following areas:

- supervision fees being waived or changed by parties other than those authorized under RSA 504-A:13 and not developing a process to ensure members received notice or a violation from Probation/Parole Officers (PPO) if parolees failed to make those payments as required under Administrative Rule Cor 310.01;

- holding administrative meetings, hearings, and handling other Board business contrary to the requirements of *RSA 91-A Access to Governmental Records and Meetings (Right-to-Know Law)*; and
- promulgating rules which did not sufficiently interpret statute as required under the *Administrative Procedure Act,* resulting in ad hoc rulemaking.

Further, while training and other resources were available to the Board from nationally accredited parole organizations, as well as the Department of Justice (DOJ), no current members utilized the resources and the Board had not sought standards or researched accreditation to improve Board functions. Policies and procedures were necessary for the Board to efficiently, effectively, and consistently implement regulatory requirements. Without written policies and procedures specifying a formal orientation and training program, new Board members learned through experience and passed down institutional knowledge, leading to inconsistencies and shifting interpretations amongst hearing panels.

Rotating Members Of Hearing Panels

Under RSA 651-A:3, the Governor appointed all Board members and designated one member as Board Chair. The Board Chair was responsible for designating another member as Chair in their absence. For revocation hearings, Board rules also required the Board Chair to appoint a member of the panel to serve as presiding officer. Hearing panels had to consist of exactly three members and the Board was required to establish operating procedures which provided for the rotation of Board members among hearing panels. The Board did not have written statutorily required procedures for rotating members among hearing panels and did not formally designate members to serve as Chair or presiding officer for hearings when necessary.

In practice, Board members submitted their availability each month to the Executive Assistant who then scheduled members for upcoming hearing panels based on their availability. While the Board Chair was aware of the statutory requirement to designate another member in their absence, we did not find documentation this designation formally occurred, nor were members formally appointed as presiding officers during revocation hearings. Members reported dividing parole packets in thirds alphabetically among panel members to efficiently review cases for the hearing day. According to the Board Chair, as a result of misunderstandings between the Board and staff, the member who reviewed each case was mistakenly noted on the template documenting the hearing results as the Chair for those parole hearings. Therefore, even when the Board Chair was present, it appeared other members were, at times, listed as the Chair for the hearing, contrary to statutory requirements that one member be designated Chair for the day only in the absence of the Board Chair.

During revocation hearings, the Board member who was also an attorney generally led the hearings and if the attorney member was unavailable, the most senior member on the panel would lead. While records of revocation hearings also listed a member as Chair, even if the Board Chair was present, there was no formal process to designate another member as Chair for revocation hearings, and no records documented a member formally appointed as the presiding officer. Additionally, the Board had no policies or procedures for when Board members were unavailable for scheduled hearings or if a conflict of interest arose, as discussed in the following section.

Code Of Conduct And Conflicts Of Interest

The Board lacked policies and procedures to address the overall conduct of Board members and any potential conflicts of interest. Codes of conduct and other policies were essential in any organization to communicate appropriate ethical and moral behavioral standards addressing acceptable operational practices and conflicts of interest. The American Correctional Association's *Standards for Parole Authorities* established a national code of ethics to guide parole authorities and included key points such as: 1) refraining members from entering into any activity which presented a conflict of interest; and 2) promoting, respecting, and contributing to an environment that was free of harassment in any form. It further specified Board members should withdraw completely from the parole process in any case a member had personal knowledge or could in any way benefit from the outcome of the case.

As we discuss in Observation No. 20, Board members informally reported conflicts of interest and did not recuse themselves from hearings if the inmate stated there was no issue with the member serving on the panel. Additionally, concerns became public in June 2017 regarding the conduct of Board members during hearings including inappropriate language and attitudes toward inmates. We observed, and some stakeholders reported, continued questionable behavior during the audit period. The Board Chair reportedly informed the Governor the Board would formalize a code of conduct following these public concerns; however, it did not begin drafting a code of conduct until October 2018. Additionally, the draft code of conduct did not address how to handle conflicts of interest.

Revocation For Not Being Of Good Conduct

Parolees could be arrested by the PPO and have parole revoked if the Board found the parolee had violated parole by not "being of good conduct and obeying all laws." In 1986, the New Hampshire Supreme Court ruled that evidence presented in support of this parole violation could not be based solely on an untried indictment. The Court found relying solely on untried indictments denied parolees due process of the law by not permitting the defense the right to cross examine the persons who originated the factual information.

Regardless of the ruling and continued advice provided by Board counsel, the Board did not develop policies and procedures to ensure evidence accepted was consistent with, and in accordance to, regulations and case law. Board members reported inconsistencies had been an issue, since at least calendar year 2015, regarding handling evidence for this type of violation, with some hearing panels requiring subpoenas for police officers and witnesses while other panels accepted sworn statements. Throughout the audit period, the topic of this violation remained a persistent issue for the Board, public defenders, and PPOs potentially risking improper application and violating due process rights of inmates.

Alignment With DOC Policies And Board Practices

Several Board processes were reliant on DOC functions such as reviewing information provided for parole packets, receiving requests for a warrant to bring a parolee in for a revocation hearing, reviewing petitions for reduction of maximum sentences, reviewing violations reported to the

Board, establishing supervision fee levels, and setting intensive supervision levels for certain parolees. Although the DOC had extensive policies and procedures as to how to implement portions of the parole process for which it was responsible, Board members did not consistently review DOC policies to align and incorporate related policies and procedures into its practices. DOC personnel and stakeholders reported the Board collaborated as needed, but without policies and procedures, Board expectations and interpretations changed as members changed, facilitating inconsistency and inefficiency throughout the parole process.

Recommendations:

We recommend the Board develop and adopt a comprehensive policy and procedure manual with sufficient detail to help ensure efficient, effective, and consistent implementation of regulatory requirements and Board practices by:

- **formalizing an orientation and training program to include pertinent information, standards for parole members and operations, and resources for continued improvement and training opportunities;**
- **establishing and adopting operating procedures which provide for the rotation of Board members on hearing panels as well as specify and document designation of a Chair in the absence of the Board Chair and appointments of presiding officers for revocation hearings in accordance with statute;**
- **adopting a code of conduct with clear expectations of Board members and how to address potential conflicts of interest; and**
- **seeking legal counsel to confirm proper acceptance of evidence for violations for parolees not being of good conduct and provide the final adopted written policy and procedure to stakeholders.**

We also recommend the Board review DOC policies and collaborate with the DOC to review current Board practices to align, develop, and adopt written policies and procedures pertinent to related functions.

Board Response:

We concur in part. The Board does currently have a Parole Board member manual, with relevant statutes, administrative rules, legal opinions, examples of documents, contact information, and general information about the parole process. Orientation is provided by the chairman or the executive assistant. New members are required to attend a few hearing dates, both release and revocation, prior to being scheduled to be a participating member of a panel.

As noted in our response to Observation No. 15, the Board will need additional qualified staff to continue to develop a more comprehensive policy and procedure manual that will incorporate all of the policies that we have previously adopted at our administrative meetings to ensure consistency in Parole Board practices and processes. There will also be increased efforts at researching of resources for continued improvement and training opportunities for Board members.

As of October 2018, there is a draft of a formal code of conduct which is still under discussion.

The Board members are regularly rotated on hearing panels. The executive assistant notes the Board member's availability for each month, then chooses a random 3-member panel for each hearing date, giving consideration that there must be an attorney of the Board present for revocation hearings. There is a challenge in the rotation of attorneys because the Board has operated with only one or two attorneys as Board members, and were limited to scheduling them only on revocation hearing dates.

In the absence of the chair, she has designated a member to serve as acting chair for parole hearings and the attorney member of a panel to serve as chair for revocation hearings. We will assure that the record accurately reflects who served as chair.

The Board has confirmed with legal counsel what evidence is required for violations of good conduct. We will formally adopt it at a future administrative meeting and share it with stakeholders.

Timeline for the Remediation of Audit Observations

Improved Parole Board member handbook	*March 2020*
Policy, Procedure, Statute & Rule Changes for processes	*Ongoing*

DOC Response:

We concur. The NHDOC will share its policies and collaborate with the NHAPB to ensure alignment within our statutory responsibilities.

Observation No. 17

Establish Processes In Administrative Rule

RSA 541-A, the *New Hampshire Administrative Procedure Act*, stipulated administrative rules were required to: 1) implement, interpret, or make specific a statute enforced or administered by an agency, and 2) prescribe or interpret an agency policy, procedure, or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. Rules were not required for internal policy applicable only to an agency's own employees, or which did not affect private rights or change the substance of another rule binding on the public.

The *New Hampshire Drafting And Procedure Manual For Administrative Rules (Manual)*, published by the Office of Legislative Services, stated in determining whether an agency policy or procedure should be in rule, agencies must pay special attention to whether the policy affected private rights or changed the substance of another rule binding on the public. Agencies could not consider policies and procedures as only pertaining to its own personnel based on how they were written, and a policy or procedure may qualify as a rule if it appeared to affect private rights of the public.

The Board did not promulgate administrative rules for some requirements binding on persons other than its own personnel and lacked rules to interpret or implement other processes. As we discussed in Observations No. 5, No. 13, and No. 23 administrative rules were needed for some aspects of medical parole, handling petitions for reduction of maximum sentences, and waiving supervision fees. We also found the Board did not have rules for certain aspects of its hearings processes, engaged in ad hoc rulemaking, did not adopt forms into administrative rules, and did not commence rulemaking for newly enacted statutes as required by law.

No Rules For Certain Aspects Of Hearings

RSA 651-A:4 specifically required the Board to adopt administrative rules for certain aspects of its operations. RSA 541-A also required it to establish rules for processes binding on persons external of Board staff. While the Board has adopted rules for some aspects of its operations, we found certain areas were lacking adequate rules.

Applications For Parole

The *Right-to-Know Law* exempted the "consideration of applications by the adult parole board" from being discussed in public session and exempted Board records from public disclosure. RSA 651-A:4, III required the Board adopt rules relative to the parole process including the conduct of parole hearings. While Board rules established a process for conducting parole hearings, it did not address how applications would be handled, what qualified as an "application" under the *Right-to-Know Law*, or how applications would be protected from public disclosure as required by law. The Board Chair and the Board's DOJ representative acknowledged Board rules were inconsistent with the *Right-to-Know Law* and inconsistencies would need to be addressed.

Reconsideration Hearings

RSA 651-A:19, IV (a) required a parole violator serving a Board-imposed sanction for violating conditions of their parole to be brought back before the Board to determine whether a longer sentence would be warranted if they did not participate in programming or received one or more major disciplinary infractions. Administrative rules required the Board to hold a reconsideration hearing for an inmate previously approved for parole who received *any* disciplinary infraction prior to release, not just major disciplinary infractions as specified in statute. While Board rules required it to hold a reconsideration hearing, rules did not address how the hearing would be conducted, who would be present, or any other requirements.

Revocation Hearings Did Not Conform To Board Rules

RSA 651-A:4, III required the Board adopt rules relative to procedures for revocation of parole. While the Board adopted rules for revocation hearings, the actual process used during revocation hearings did not follow those established in rules, and may have been too formal for its purposes. Board rules required the following which did not appear to align with the process we observed:

- All revocation hearings were required to be conducted by a member of the Board designated by the Board Chair to serve as presiding officer. However hearings were

conducted by a panel of members available that day and were generally overseen by the attorney member of the Board without formal designation by the Board Chair.

- The presiding officer was required to facilitate informal resolution of appeal; however, there was no statutory authority for parolees to appeal the Board's revocation decision.
- The presiding officer was required to administer oaths and affirmations; however, parolees and PPOs were inconsistently sworn in by the presiding officer prior to offering testimony. We also found some instances where PPOs were sworn in by the inmate's counsel prior to being cross examined.
- Rules required motions be submitted in writing and filed with the presiding officer; however, the 65 revocation hearings we observed did not include any motions, and we did not find written motions in any of the 50 the revocation files we reviewed.
- Rules referred to the scheduling of pre-hearing conferences; however, pre-hearing conferences did not take place in any revocation file we reviewed and settlements were generally handled informally outside of the hearing process.
- Rules required items offered into evidence as exhibits be included in the record unless excluded by the presiding officer. However, exhibits did not appear to be a routine part of revocation hearings, were not presented in any of the 65 hearings we observed, or found in any of the 50 revocation files we reviewed.

Ad Hoc Rulemaking

Rules supplemented statutory requirements by describing how statutory requirements would be implemented. Rules had the force of law and no rule was valid or effective, nor could it be enforced by an agency, until it was properly adopted. The Board augmented some existing rules by imposing additional requirements without formally incorporating them in rules, or created requirements in the absence of rules, essentially imposing ad hoc requirements.

Medical Parole

Since at least October 2016, the Board decided to impose certain conditions on inmates recommended for medical parole for a certain type of treatment. Inmates recommended for medical parole for this type of treatment were:

- required to have a home residence and would not be released to a drug treatment facility;
- placed under house arrest, with the exception of attending medical appointments;
- required to have a sponsor to ensure they could access necessities without leaving the home; and
- required to schedule all appointments prior to release.

Additionally, the Board agreed medical parole for this treatment would be authorized for no longer than six months, at which point the parolee would be returned to prison unless they continued to meet the criteria for medical parole. These requirements, some of which inmates would have needed to meet prior to being released, were not codified in rules. We found two inmates were subsequently denied medical parole, in part, for not being able to meet these requirements.

Reduction Of Maximum Sentence

As discussed in Observation No. 13, the Board did not have administrative rules for handling petitions for the reduction of a parolee's maximum sentence. Despite the lack of rules, the Board imposed a requirement that parolees report to their PPO no more often than every six months before the petition would be approved. Board members also imposed differing criteria for evaluating petitions with some members requiring a parolee pay off all their financial obligations before approving a petition, while others did not. Additionally, some members reported not approving petitions if the parolee had what they believed was a considerable amount of time left on their sentence. These criteria were not defined in rules.

Disciplinary Infractions Prior To Release

If an inmate incurred a disciplinary infraction after the Board had already approved parole, Board rules required a sanction of 60 days for a minor disciplinary infraction, and 90 days for a major infraction. Board rules were silent as to the date the sanction would start. Past practice dictated the sanction would start on the date the infraction occurred. However, in April 2018, the Board imposed additional requirements by establishing that the sanction would start when the infraction was resolved rather than when the infraction was incurred.

Forms Not Adopted As Required

Statute required forms be established in administrative rules. RSA 541-A:1, VII-a defined a form as a document required for persons outside the agency to provide information, or the format in which that information must be submitted. The *Manual* further clarified that a document requiring certain information be submitted, specifying how that information should be submitted, or containing a mandatory list of information to be submitted met the definition of a rule. Forms could be adopted by either writing out the requirements in rules or by incorporating the form by reference. We found the Board required the following forms be submitted by either inmates or PPOs; however, the requirements of these forms were not written and adopted in the Board's administrative rules, nor were they incorporated by reference.

Petition For Reduction Of Maximum Sentence

The Board required PPOs submit a petition on behalf of a parolee for consideration for a reduction of the parolee's maximum sentence. The petition required information such as the parolee's offense; reporting schedule; financial status including the amount of restitution, fines, and fees owed; employment record; living arrangements; compliance issues; and the PPO's recommendation. This form contained the only information Board members used to grant or deny a petition.

Inmate's Parole Plan

Inmates appearing before the Board for a parole release hearing were required to submit a parole plan. The parole plan required the inmate to summarize their offense; provide information on treatment, their home plan, and others living at the residence; list employment history and

employable skills; and explain their offense and why the Board should grant parole. The document instructed inmates to complete all information and cautioned that failure to do so could result in the plan not being approved, and essentially, parole being denied. At least two Board members reported placing emphasis on the inmate's parole plan, citing it provided insight on whether the inmate had taken responsibility for their crime or showed remorse towards the victim.

Warrant For Parolee Arrest

When a parolee violated conditions of their parole, the PPO was required to obtain a warrant from the Board to arrest and bring them before the Board for a parole revocation hearing. In February, 2018 the Board established a format listing general guidelines and suggested wording for each of the conditions parolees were required to adhere. PPOs were required to use this format when submitting a warrant to the Board.

Newly Amended Statutes

RSA 541-A:17, II required an agency to start rulemaking no later than 90 days after the effective date of an amended statute. In September 2018 the Legislature amended statute allowing the Board to impose a sanction of less than 90 days for a parole violator who entered into and successfully completed a residential substance abuse treatment program. The statute was effective September 13, 2018, and in that same month the Board discussed implementation of the statute and determined PPOs would be required to request a warrant if a parolee left the residential treatment facility prior to completion. However, as of December 2018, the Board had not commenced rulemaking to implement the statute.

Recommendations:

We recommend the Board, in conjunction with its DOJ representative, review its statutory authority and corresponding administrative rules to ensure adequate rules are promulgated for all:

- **activities under its authority as outlined in RSA 651-A, and**
- **requirements it imposed on persons external to its own personnel including inmates, DOC personnel, and members of the public.**

We also recommend the Board adopt into its rules all forms it requires inmates and DOC personnel to use when providing information.

Board Response:

We concur that all the recommendations would have us to comply with the letter of the law, something we strive to do. We have made significant improvements. However, we will need support from DOC, additional staff, or funding for a consultant to comply with requirements for administrative rulemaking.

As discussed in our response to Observations No. 15 and No. 16 the Board is entirely in agreement with the need for formal rules, policies, and procedures. When able, we will work with all DOC and legal counsel to review the Board's activities and ensure that we have adequate administrative rules and will continue to refine our procedures to assure compliance with statute.

Timeline for the Remediation of Audit Observations

Policy, Procedure, Administrative Rules and Statutory changes for Parole Board Operations	*Ongoing*

Access To Government Records

The public's access to government records helps facilitate transparency and accountability in government operations. New Hampshire's *Right-to-Know Law*, RSA 91-A, was enacted to ensure the "greatest possible public access to the actions, discussions and records of all public bodies and their accountability to the people." In 2015, the DOJ provided an update to its *Memorandum On New Hampshire's Right-to-Know Law, RSA 91-A (Memorandum)* providing clarification to all State agencies on implementing each component of the *Right-to-Know Law*.

Under the *Right-to-Know Law,* the convening of the majority of the members of a public body "for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power" was considered a meeting. Whenever Board members met or interacted for the purpose of discussing or acting upon such matters, the Board was subject to *Right-to-Know Law* requirements. This included Board administrative meetings, hearing panels, subcommittees, advisory committees, and any other ad hoc workgroup formed in furtherance of the Board's functions. Communications pertaining to matters of Board business outside a meeting, including sequential communications among Board members was not permitted as it circumvented the spirit and purpose of the *Right-to-Know Law*.

We found the Board routinely conducted Board business and held hearings in a manner that was noncompliant with the *Right-to-Know Law* and lacked policies and procedures clarifying how to handle confidential matters in accordance with statute.

Observation No. 18

Comply With *Right-to-Know Law* Requirements For Board Meetings

Although the DOJ's *Memorandum* was publicly available, Board members and staff did not review it, or were unaware of this resource, resulting in fundamental noncompliance with the *Right-to-Know Law* when conducting Board business.

Administrative Meetings

In State fiscal years 2017 and 2018, the Board held 17 administrative meetings to conduct Board business and learn more about specific DOC processes. Additionally, we observed five administrative meetings, four of which occurred outside the audit period. The Board regularly conducted its administrative meetings in a manner contrary to *Right-to-Know Law* requirements.

Inconsistently Posted Notice Of Meetings

All meetings, including non-public sessions, required a notice of the meeting be posted in two places at least 24 hours prior to the meeting. We could not verify whether the meeting notice was posted in two places for meetings occurring in June 2018 and prior, but the Board reportedly posted meeting notices on the DOC website as well as the public building in which administrative meetings were held. However, at least two of the four administrative meetings occurring in July 2018 and after were not posted in two locations as statutorily required. According to the *Memorandum*, failure to give proper public notice of its meetings subjected the Board to possible judicial sanctions, including an order declaring the meeting invalid or an order assessing legal costs and fees.

Documentation And Availability Required For Minutes

All meetings also required minutes, which were to be treated as permanent records, documenting the names of members present, persons appearing before the Board, brief description of the subject matter discussed, and final decisions. The *Memorandum* further clarified documentation of final decisions included a clear description of the motion, the person making the motion, person seconding the motion, and actions made on the motion. Minutes of the public session were to be made available for inspection within five business days after the meeting and within 72 hours for non-public session, unless the Board took action to properly seal the non-public session minutes only for purposes allowed under the *Right-to-Know Law*. Draft minutes could fulfill this requirement until final minutes were adopted by the Board. Once adopted, minutes had to be consistently posted to the Board website or a notice had to be posted on the website stating where the minutes could be requested and reviewed.

As discussed in Observation No. 24, the Board was unable to provide minutes for eight of the 17 meetings during the audit period. While some of the minutes were missing due to lack of a records retention policy, the Executive Assistant reported minutes for three of the administrative meetings were not created because one meeting was for a tour of a prison facility and two of the meetings were presentations provided by stakeholder agencies. Per the *Right-to-Know Law,* the two presentations constituted a meeting since a majority of Board members gathered for a purpose over which it had "supervision, control, jurisdiction, or advisory power;" therefore, notice and minutes were still required. Additionally, statute only authorized Board members to receive a per diem payment and mileage reimbursement when attending administrative meetings and hearings. The tour was scheduled similar to an administrative meeting and members received payment and reimbursement on this date, subjecting it to the same requirements as a meeting under the *Right-to-Know Law*.

Available Board minutes depicted discussions and proposed actions to be taken as a result of certain discussions; however, no formal motions or voting took place to finalize the Board's decisions. Additionally, the Board was required to adopt and post its final minutes under *Right-to-Know Law*, but it did not begin adopting its minutes until February 2018, and final minutes were not posted or available through request on its website. Without the Board formally finalizing its decisions and adopting and posting minutes, the validity of its actions were subject to question.

We informed the Board of the requirements to finalize its decisions in September 2018 and the Board subsequently began motioning, voting, and documenting final decisions at its meetings.

Confidential Materials And Non-Public Sessions

The Board could enter into non-public sessions, upon a properly made motion and roll call vote, for several reasons under the *Right-to-Know Law,* including discussing matters which would likely adversely affect the reputation of any person, other than a member of the Board. Additionally, parole records were exempt from public disclosure. Any other materials created, accepted, or obtained, on behalf of or by a quorum of the Board, were subject to public disclosure if not discussed and properly sealed during non-public session.

Although some Board discussions and materials may have been more suitable for non-public session, the Board only held its meetings in public session. For example, the Board received a legal opinion from its DOJ representative explicitly stating it was to remain a Board internal memo and not be disclosed to certain parties. However, Board members had copies of and discussed the memo during the meeting while one of the parties prohibited from receiving the memo was in attendance. The Board subjected the memo to public disclosure by not entering into non-public session to consider legal advice as permitted under statute.

Additionally, we observed another administrative meeting in which Board members were provided excerpts of inmates' parole packets and guidance to illustrate how information for consideration may be presented differently. The packets were not redacted and contained inmate health and substance abuse history, as well as personally identifiable information such as social security numbers, birth dates, and addresses. Packets also encompassed personal information of inmate family members, employers, and victims such as names, addresses, and birth dates. The *Right-to-Know Law* exempted parole records from the right to public inspection. By not entering into non-public session, the Board potentially exposed sensitive information and risked adversely affecting the reputation of these individuals.

Consultation With Legal Counsel

The *Memorandum* provided that when a majority of members consulted with legal counsel, it was not a "meeting" under the *Right-to-Know Law*, nor did it fall within non-public meeting provisions. If the Board wanted to consult with legal counsel during a meeting with the public present, it was to adjourn its public meeting on the record. These consultations were to be limited to discussion of legal issues. Board deliberation about the legal matter and final decision making was not to be undertaken until reconvening into public session, or if applicable, into non-public session.

The Board had at least three legal consultations during the audit period after its public meetings had adjourned. However, the Board did not limit its discussions to legal matters and did not reconvene to deliberate or finalize its decisions. Some of the discussions unrelated to legal matters and deliberations or proposed actions by the Board included members:

- deciding with a PPO appropriate language for a special condition on the parole certificate;
- specifying what type of conduct indicated a related offense or offending pattern;

- determining how to set conditions from advisory committees if recommendations were unclear; and
- agreeing generally to implement certain procedures for reconsideration hearings and medical parolees.

Recommendations:

We recommend the Board:

- **comply with *Right-to-Know Law* requirements when conducting any Board business by posting notices, properly finalizing decisions, adopting minutes, and posting approved minutes;**
- **enter into non-public session to discuss sensitive and confidential matters or materials; and**
- **limit discussions to legal matters during consultation with legal counsel and deliberate and finalize decisions in public or non-public meetings.**

We also recommend the Board formalize training of the *Right-to-Know Law* by incorporating the *Memorandum* and investigating the availability of training provided by the DOJ. The Board should require attendance of all Board members and key Board staff as part of formal training.

Board Response:

We concur in part. The Board will schedule a training on the Right to Know law when we have a full membership. We do keep minutes and include information on the notice of every meeting about how to get copies. The Board sends notice of meetings to the DOC for posting on its website and to the director of operations for Legislative Office Building where we hold our administrative meetings. We have no access to the DOC website or the LOB bulletin Boards so if staff there doesn't post our notice there is little we can do. The Board will formally vote to finalize decisions and policies that we had previously agreed to by consensus.

Timeline for the Remediation of Audit Observations

Develop & Implement a Formalized Training For Right To Know	*March 2020*
Formally vote to finalize decisions & policies previously agreed to	*January 2020*

Observation No. 19

Comply With *Right-to-Know Law* Requirements For Hearings

Hearings were not conducted and documented in accordance with *Right-to-Know Law* requirements and certain Board rules appeared to conflict with statute, leaving the Board uncertain as to how to implement some components of the *Right-to-Know Law* when conducting hearings.

Statute specified Board hearing panels were to consist of exactly three members. At hearings, the panel exercised its authority over matters in which it had control, jurisdiction, and supervision. Under the *Right-to-Know Law*, a hearing panel was equivalent to a Board subcommittee and the days the Board conducted hearings were equivalent to meetings; therefore, hearings were subject to the same statutory requirements as Board administrative meetings, as discussed in Observation No. 18.

The Board was provided two exemptions under the *Right-to-Know Law*: 1) consideration of applications for parole by the Board were non-public matters and exempt from public session, and 2) Board parole records and minutes of hearings were exempt from the right to public inspection. During the audit period, the Board began seeking legal counsel to determine whether certain hearings were to be held in non-public session or public session. Regardless of whether hearings were public or non-public, the Board was still required to comply with the other requirements of the *Right-to-Know Law* such as:

- providing notice of meetings;
- entering into nonpublic session when necessary;
- making proper motions;
- voting on final decisions; and
- documenting, adopting, and retaining meeting minutes containing names of members present, persons appearing before the Board, brief description of subject matter, and final decisions.

Meeting Notices

As discussed in Observation No. 18, the Board was required to post meeting notices on its website and in two locations where the public was likely see them. While the Board consistently posted notice of hearings to the DOC's website, it did not post meeting notices in two locations as required. The *Memorandum* further recommended the notice state when meetings were planned as public or non-public. By not complying with notice of meeting requirements, the Board risked incurring judicial sanctions including an order declaring the hearings invalid or an order assessing legal costs and fees.

Hearing Procedures

Generally, the Board scheduled about 30 hearings per day for reviews, revocations, and parole release. The hearing panel would convene for the day, Board staff digitally recorded hearings for each inmate independently of each other, and the panel rendered its decision immediately following discussion of each hearing. If a member of the public wished to attend a specific hearing, they had to contact Board staff prior to the hearing and would be added to an attendance list.

Conducting Hearings In Non-public Session

Prior to the appointment of the current Board Chair, hearings were considered and conducted in a non-public manner. Within the past five years, the Board Chair began conducting parole hearings in a public manner in an effort to facilitate transparency. In June 2018, Board counsel advised that

holding parole release hearings in public appeared to violate the *Right-to-Know Law*. Immediately thereafter, the DOJ temporarily suspended Board counsel's advice after stakeholders raised concerns, and the Board reverted back to holding parole hearings in public. Through at least October 2018, the Board continued conducting all hearings in a public manner and was still seeking legal clarification.

Although considerations of applications for parole were exempt from public session under the *Right-to-Know Law*, and the Board and Board counsel had concerns regarding holding all hearings in public session, hearing days were not formerly opened by the Board Chair or designated chairperson, and the panel never entered into non-public session during any of its hearings.

In addition to the formal exemption in statute for considering applications for parole, aspects of all hearings could reasonably be considered appropriate for non-public session. For example, the nature of discussion and documentation provided during hearings consisted of sensitive and confidential information and risked adversely affecting individuals other than members of the Board such as inmates, family members, and victims. While revocation hearings specifically were historically considered public, and were still being reviewed by Board counsel as to whether or not it would be more appropriate to handle them in non-public session, revocation hearings included similar sensitive and confidential information at times.

Board members and staff reported being unaware of the procedures for entering into non-public session. There were also concerns how much time would be required to enter into non-public session for each individual hearing because of the number of hearings scheduled per day. However, if properly motioned and seconded, the hearing panel could at least enter into one non-public session for the day, for the purpose of considering all scheduled parole applications.

Public Hearings And Members Of The Public

Under the *Right-to-Know Law*, any person could attend a public meeting. However, while the Board mostly conducted hearings publically throughout the audit period, it informally restricted attendance to all hearings for persons under 16 years of age and public members identified as having no contact orders with the inmate. Although some restrictions could potentially be considered reasonable to ensure public safety, the Board would be unable to implement informal restrictions for public hearings and remain compliant with statute.

Rendering Of Final Decisions

The *Right-to-Know Law* required proper motions and voting, regardless of whether the session was public or non-public, but the Board did not render final decisions in compliance with statute. Instead, the hearing panel informally discussed the matter until a general consensus was reached, and a member of the panel would announce the decision without any corresponding motions or votes.

Board rules unnecessarily hampered the Board's ability to comply with the *Right-to-Know Law* by promulgating rules prohibiting the disclosure of individual member votes. Board members and staff reported being unsure how to undertake voting while remaining complaint with both the

Right-to-Know Law and rules. Board rules prohibited the disclosure of a member's vote under any circumstances unless court-ordered, while the *Right-to-Know Law* stipulated, "…no vote while in open session may be taken by secret ballot." Since statute took precedence over administrative rules and the Board considered hearings public, members would have been forced to disclose their votes in order to remain compliant with statute.

In order to maintain confidential votes, the Board members and Board counsel discussed having non-members leave the hearings room each time a vote took place and enter into non-public session in order to hold a roll call vote, but it was determined not feasible due to time constraints. If both parole and revocation hearings were to be conducted in non-public session, the Board could enter into non-public session for the day, as noted previously. The Board could motion and vote in compliance with both regulatory requirements without having to enter into non-public session for each hearing and it would not have to vacate the hearings room for any decisions.

For example, a motion does not disclose one's vote, but rather it signifies intent to vote on the proposed action. Additionally, a *verbal* vote was not required to qualify as a roll call vote under the *Right-to-Know Law* during non-public sessions. Instead, panel members could take roll call by writing down their vote without disclosing any individual member's vote. Further, the *Right-to-Know Law* exempted records and minutes of the hearings from the right to public inspection which would prevent the disclosure of member votes if they were written. However, if the Board sought to continue hearings in public, it would require Board members to publically disclose their votes if the Board was unwilling to enter into non-public session during each hearing.

Documented Hearing Results And Verbatim Recordings

Although the Board was exempt from releasing records and minutes of its hearings to the public, the Board was still required to create, adopt, and retain final minutes documenting the names of members, names of persons appearing or speaking before the public body, a description of each subject discussed, and final decision made including actions on all motions made. Non-public session minutes also required the vote of each member be documented for all actions. Additionally, the Board's administrative rules required it to create electronic verbatim recording of all hearings.

Following a hearing, Board staff created results of each hearing by filling out a template containing the type of hearing, members of the hearing panel, recording number associated with the hearing, outcome of the hearing, and conditions of parole or requirements for the inmate to satisfy depending on the type of hearing and outcome. While Board staff recorded individual hearings for each inmate appearing before the Board and created results of each hearing:

- the recordings did not capture the names of the members of the hearing panel or consistently capture names of persons speaking before the Board due to the Board not conducting hearings in a manner compliant with the *Right-to-Know Law*;
- Board staff inconsistently documented persons appearing or speaking before the Board on the template; and
- the Board did not create, adopt, or retain hearing minutes encompassing the names of hearing panel members, persons appearing or speaking before the Board, description of each subject discussed, and final decisions made within each hearing day.

Confidential Parole Records And Public Disclosure

State law defined a record as any document or recording, regardless of physical form or characteristics, made or received "pursuant to law or in connection with the transaction of official business." Electronic recordings were confidential parole records under Board rules which were exempt from public disclosure per the *Right-to-Know Law*. However, Board rules stipulated verbatim recordings of hearings had to be provided upon a request from any person, contrary to its other rules and exemption in statute. Board staff and Board counsel speculated the rule was established to provide recordings to the counsel of inmates upon request, but the Board had provided recordings to non-counsel persons upon request and the rule was not written to distinguish between counsel and members of the public.

Recommendations:

We recommend the Board immediately obtain clarification from the DOJ as to whether the Board should conduct hearings under its authority in public or non-public session. Regardless of the final determination for conducting hearings, the Board should begin developing formal procedures to comply with the *Right-to-Know Law* by:

- **posting notice of meetings in two public locations;**
- **formally opening hearings by the Board Chair or designated chair;**
- **ensuring verbatim recordings identify all members and persons appearing before the Board for the record;**
- **making proper motions during hearings;**
- **voting on final decisions; and**
- **documenting, adopting, and retaining meeting minutes for each hearing day containing names of members present, persons appearing before the Board, brief description of subject matter, and final decisions**.

We also recommend the Board review administrative rules related to disclosing member votes and providing verbatim recordings to any person upon request, and remedy conflicts with statute.

Board Response:

We concur in part. The Board is already in compliance with the first three recommendations. Voting on final decisions while maintaining confidentiality of each member's vote will be impractical, as will voting to adopt the minutes for 25+ hearings. Instead, at the end of each hearing staff reads into the record the decision of the Board and any conditions and asks for confirmation of its accuracy by the members. The Board awaits clarification from the DOJ about the conflict between our rules and the Right to Know law as well as the advisability of conducting all our hearings on non-public session.

Timeline for the Remediation of Audit Observations

Develop & Implement a Formalized Training For Right To Know	*See Observation Response No. 18*
Continued consultation with legal counsel about standardization & implementation of RTK law	*Ongoing*

Board Hearing Panels And Notices

State law required hearings be held by a panel of exactly three Board members. Prior to any hearing being held, the Board was required to provide notice of the hearing at least 15 days in advance to the county attorney, chief of police, and the victim, as well as post notice of the hearing on the DOC website. We found the Board lacked policies and procedures to ensure notice of hearing requirements were met, and informally interpreted statute to only apply notice requirements to certain types of hearings. Further, there were no policies and procedures to ensure members were eligible to serve or to address how to handle instances in which a member on the panel encountered a potential conflict of interest, risking the legitimacy of certain hearings.

Observation No. 20

Ensure Hearing Panels Are Compliant With Statute

State law required hearings to "be held by a hearing panel consisting of exactly 3 members of the board." We found instances when the Board may have operated with less than three eligible members on a hearing panel.

Potential Board Member Conflicts Of Interest

The Board did not have a policy requiring disclosure of conflicts of interest or how potential conflicts would be handled. Additionally, it did not have a recusal policy outlining circumstances when a Board member must be recused. While cited as rare, Board members and staff identified at least three separate instances where a member identified a potential conflict of interest which could have required them to recuse themselves from the hearing panel.

While no policy existed, Board members and staff reported members were expected to self-identify instances when they may potentially have a conflict, and determine whether they should recuse themselves. Board members and staff stated if a potential conflict arose, Board members asked the inmate whether the inmate preferred to postpone their hearing to another date or follow through with the current hearing and assigned Board members.

Our review of 147 parole release, parole revocation, medical parole, and reduction of maximum sentence files found only one instance where a Board member was recused, leaving a hearing panel of only two members. However, the risk exists for other potential conflicts to affect the number of members on a hearing panel.

Statements Of Financial Interests

RSA 15-A:6 required every person appointed by the Governor or Governor and Executive Council to a board, commission, or committee to file a statement of financial interests within 14 days of assuming the appointment, and annually thereafter by the third Friday in January. Statute prohibited anyone who was required to file from serving in their "appointed capacity prior to filing a statement" of financial interests.

In October 2018, the DOJ provided an opinion to all State agencies that decisions made by public officials who failed to file their annual financial disclosures pursuant to RSA 15-A:6 were not voidable. According to the DOJ, eligibility to serve was only contingent upon public officials successfully filing an *initial* financial disclosure and eligibility to serve was not impacted by a lack of subsequent annual financial disclosures. However, we have historically understood the statutory provision determining eligibility to serve to be contingent on both the public official's initial filing and subsequent annual filings. Because the courts have not addressed this issue, we still conclude actions taken by public officials who failed to file their annual financial disclosure pose a risk of being questioned.

We found three Board members did not refile timely annual statements of financial interests, potentially affecting their ability to serve in their appointed function for part of the audit period. Two members each served for six months without filing a statement of financial interests, while the third served for eight months without filing. While it is unclear how many hearing panels these three members actually participated in during the months they did not file, our review of 147 parole release, revocation, medical parole, and reduction of maximum sentence files found that during this time, 24 inmates (16 percent) appeared before a panel consisting of at least one of these members for a hearing, or petitioned for a reduction of their maximum sentence. Since statute prohibited members from serving until they filed a statement of financial interests, these 24 hearings may not have been compliant with the requirement that hearing panels consist of exactly three members.

Recommendations:

We recommend the Board establish:

- **a policy addressing disclosure of potential conflicts of interest,**
- **procedures on how conflicts of interest should be handled if a Board member is scheduled as part of the hearing panel, and**
- **a procedure to ensure all members file timely statements of financial interests.**

We also suggest the Legislature consider clarifying RSA 15-A:6 regarding whether failure to file annual financial disclosures should prohibit public officials from serving on their appointed capacity.

Board Response:

We concur. A policy on conflict of interest will be part of the code of conduct once adopted. Currently if a member recognizes he has a conflict prior to the hearing, he notifies the executive assistant and the inmate is rescheduled to a date when that member is not sitting. If the conflict is discovered the day of the hearing, the inmate is apprised of the nature of the conflict and given the opportunity to appear on another day without affecting his release date.

Each December the executive assistant collects financial disclosures from all members, makes and retains copies, and then submits the completed forms to the Secretary of State.

Timeline for the Remediation of Audit Observations

Improved Parole Board member handbook, to include policy on conflict of interest	*March 2020*

Observation No. 21

Better Document Notices Of Hearing

Prior to holding any parole hearing, statute required the Board to provide at least 15 days' notice to the county attorney, chief of police, and victim, as well as post notice of the hearings on the DOC website. The Board was also required to provide notice to the inmate. However, the Board did not have a process to document when notices were provided; therefore, we could not verify they were actually provided in all cases.

No Process To Document Notices Issued

The Board was required to notify the Victim Services Bureau of hearings, and Victim Services was responsible for notifying victims. While we could not find documentation of communication between the Board and Victim Services in any of the 102 inmate files we reviewed, we confirmed with Victim Services staff that the Board notified them of all applicable hearings, and victims were notified in all instances.

We were unable to verify whether the Board complied with the 15-day notice requirements for county attorneys or chiefs of police. Board staff stated these hearing notices were sent through email at the same time the notices were posted to the DOC website. Board staff reportedly maintained a list of the parties required to be contacted and attached notifications for upcoming hearings in emails, as appropriate. However, we did not find evidence of these communications in any of the inmate files we reviewed; therefore, we were unable to determine whether the notices were issued timely.

Some Inmate And Parolee Notices Were Missing

RSA 541-A:31, III required the Board provide a notice of hearing, containing specific information and language, in contested cases. The Board's administrative rules appeared to require the Board provide this notice to inmates and parolees for all hearings. However, we did not find hearing

notices in any of the 41 parole release hearings we reviewed. Additionally, we found one inmate appearing for a parole release hearing was not listed on the notice posted to the DOC website.

Further, we did not find notices for some revocation hearings, and the Board did not provide inmates and parolees with updated notices for rescheduled hearings. Of the 50 revocation hearings we reviewed, 11 files (22 percent) did not contain any notice of hearing. In an additional ten (20 percent), we found the notice contained in the file was not for the date the parolee actually appeared before the Board.

Notices For Revocation Hearings Not In Compliance With Statute And Administrative Rules

The Board was required to provide a notice, particularly for contested cases, to the inmate containing:

- a statement of the time, place and nature of the hearing;
- a statement of the legal authority under which the hearing is to be held;
- a reference to sections of the statutes and rules involved;
- a statement of the issues involved; and
- a statement that the parolee has the right to have an attorney present.

Notices of an upcoming revocation hearing were all missing a statement regarding the parolee's right to an attorney and references to the particular statutes and rules pertaining to the hearing. Board staff stated the parolee signed a separate document requesting an attorney; however, this statement was not contained on the notice of hearing as required.

Recommendations:

We recommend the Board:

- **establish a process to track when notices of hearing were provided to all required parties, and ensure it maintains documentation to demonstrate compliance with these requirements;**
- **ensure parolees receive proper notice of rescheduled hearings, and documentation is maintained to demonstrate compliance; and**
- **ensure all required statutory language is incorporated into the notice of hearing.**

Board Response:

We concur in part. Notices of parole release hearings are provided to required parties under RSA 651-A:11 via email which can be documented by checking the "Sent" email file, but the Board is looking at improving the tracking of hearing notice requirements. Notice to parolees of revocation hearings includes all the information required by statute. We do not keep copies of these notices because of the volume of paper involved.

Timeline for the Remediation of Audit Observations

Improved tracking of hearing notice requirements	*January 2020*

LBA Rejoinder:

Administrative rule Par 203.04 specifically required the Executive Assistant to provide written notice to each inmate scheduled for a hearing before the Board. Retaining documentation allows management to control its operations and allows others to evaluate and analyze operations. Without proper documentation, the Board cannot demonstrate compliance with its rules.

Observation No. 22

Review Notice Of Hearing Requirements

In certain circumstances, the Board was unable to comply with notice of hearing requirements. State law required a parolee who was recommitted to prison for a parole violation to serve 90 days in prison before being released back out on parole. The Board was authorized to impose an extended or shorter sanction if certain criteria were met. If these criteria were not met, the inmate had to be released after serving the 90-day recommittal period. However, if a parolee received one or more major disciplinary violations, RSA 651-A:19, IV required the parolee be brought back before the Board to determine whether a longer term of committal was warranted. It also required the inmate receive notice of the hearing. RSA 651-A:11 established general requirements for notices of hearing compelling the Board to provide at least 15 days' notice to various parties, including the public, law enforcement entities, and the victim. It prohibited the Board from conducting any "parole hearing without first having met the notice requirements of this section."

In some instances, the Board would not be able to meet these notice requirements. Specifically, the Board would not be able to provide the required notice for a parolee who received a major disciplinary violation with less than 15 days left in their sanction. According to Board staff, parolees who received a major disciplinary violation were brought before the Board for a reconsideration hearing. However, these hearings did not follow notice requirements because the Board interpreted the requirement to apply to only parole release hearings. As the Board had already provided notice to the parties listed in RSA 651-A:11 when the inmate appeared for a parole release hearing at their minimum parole date, it determined this was not required for other types of hearings such as reconsideration, revocation, or review hearings. Additionally, if the Board was prohibited from holding a reconsideration hearing until the notice requirements were met, this could result in inmates with major disciplinary violations being released without additional Board review.

Administrative rules only required the Board to hold a reconsideration hearing but did not address the process for issuing notices of hearing or how the hearing would be conducted. Additionally, the Board did not have formally adopted policies or procedures outlining any of these considerations. Regardless, RSA 651-A:11 did not distinguish between parole release, revocation, or reconsideration hearings and did not appear to provide for any exemptions. Additionally, despite the Board's argument the requirement only applied to parole release hearings, it did provide notice to the public and the victim.

Recommendations:

We recommend the Board work with its DOJ representative to review whether the notice of hearing requirements in RSA 651-A:11 apply universally to all hearings conducted by the Board. These determinations should be formally adopted in rule by the Board and developed into policies and procedures.

If the Board determines timeframes established in statute would not allow it to conduct reconsideration hearings for parolees who received a major disciplinary violation less than 15 days of their release, it may want to consider asking the Legislature to amend the statute to allow it more flexibility.

We also recommend the Board adopt administrative rules outlining the process for conducting reconsideration hearings.

Board Response:

We concur. The Board requested guidance from DOJ in December and will take appropriate action when we get an answer.

Timeline for the Remediation of Audit Observations

Get DOJ opinions on "applications for parole" and reconsideration hearings for major disciplinaries	*September 2019*
Establish administrative rules for reconsideration	*Ongoing*

Additional Board Responsibilities

Several Board responsibilities were required by statute or administrative rule which necessitated documentation of its processes to ensure compliance with regulations such as documenting confidential Board member votes and delegating authority to waive supervision fees.

All State agencies including any department, office, commission, board or other unit within the executive branch of government were required to follow the requirements of the *Archives and Records Management Act*. Each agency was required to establish and maintain a program for the management of records containing adequate and proper documentation of the organization, as well as functions, policies, decisions, procedures, and essential transactions of the agency. Statute also required agencies retain records for no less than a four-year period before records could be disposed of or destroyed. Records included documents, books, paper, drawings, photographs, recordings, electronic records, microfilm, or other material, made or received pursuant to law or in connection with the transaction of official business.

We found the Board was ineffective in documenting and retaining records. Specifically, it lacked a records retention program leading to Board records being lost or destroyed prior to the four-year period, supervision fees being waived in whole or in part by individuals not statutorily authorized to do so and without accompanying documentation, and noncompliance with administrative rule requiring member votes be made available should a court order be issued.

Observation No. 23

Improve The Process To Waive Supervision Fees

RSA 504-A:13, I required the Board to establish supervision fees of no less than $40 for parolees, but may be any greater amount as determined by the Board or the court. Statute allowed three entities, the court, the Board, and the DOC Commissioner, to waive these fees in whole or in part. During the audit period, the Board did not establish a supervision fee schedule or process to waive these fees, nor did it define circumstances which may warrant a reduced or waived fee. A similar Observation was made in the 2010 LBA financial audit report of the DOC, which recommended the DOC establish rules for the payment and collection of supervision fees in administrative rule.

The DOC established supervision fees in its policies, which stated, absent an order from the court or the Board to the contrary, these fees would be determined based on monthly income. According to Division of Field Services personnel, PPOs did not waive supervision fees as they did not have that authority. However, DOC policy allowed the PPO to set the fee at $0, effectively waiving it. Additionally, the policy also instructed PPOs to record whether the parolee was required to pay the fee by recording it in CORIS as "pay supervision fee" or "supervision fee waiver."

In our review of 41 parole release files, we found 15 instances where the supervision fee had been waived. In five cases, it appeared the PPO waived the supervision fee based on a parolee's income level or amount of restitution owed. Restitution was not a factor DOC policy allowed to be considered when setting the supervision fee. In ten other cases, the parole files did not document why the fees were waived or by whom.

Board members and staff reported PPOs usually set supervision fees using an unclear process. They also did not recall any instances in which they waived supervision fees during a hearing. The Board's Executive Assistant reported reviewing and approving PPOs' requests to waive supervision fees if, for example, the parolee lost a job or was paying for counseling as a condition of their parole. However, the Board had not delegated the Executive Assistant the authority to waive these fees on its behalf. The Board also did not establish thresholds for which the Executive Assistant was authorized to waive fees, or the circumstances which may merit a fee reduction or waiver. Additionally, there was no system to track parolees whose supervision fees had been waived, and no process to inform the Board of these actions the Executive Assistant had taken on its behalf.

In October 2018, the Board adopted the DOC's supervision fee schedule, and authorized the Executive Assistant to waive these fees in whole or in part for good cause shown. However, the policy did not provide guidance on what was considered "good cause" which may merit a waiver. The Board also has not formalized the process to review fees waived by the Executive Assistant to ensure they align with Board expectations.

Recommendations:

We recommend the Board continue to improve its process to consider requests to waive supervision fees. Specifically, the process should include establishing:

- **a method for submitting requests to waive supervision fees, in whole or in part;**
- **guidelines outlining circumstances which may warrant approval of a fee waiver and the threshold for which the Executive Assistant has the authority to approve waiver requests;**
- **a formal process for periodic Board review of waiver requests approved by the Executive Assistant on its behalf to ensure approvals align with Board guidelines; and**
- **a process to bring waiver requests not meeting guidelines to the Board for review.**

We also recommend the DOC establish rules for the payment and collection of supervision fees in its administrative rules as required by statute.

Board Response:

We concur. Until administrative rules are adopted the Board will continue to operate under the supervision fee schedule already approved by the Board. The executive assistant will periodically report wavier requests to the Board and will seek Board approval for extraordinary circumstances.

Timeline for the Remediation of Audit Observations

Establish administrative rules for supervision fees.	*Ongoing*
Develop process for submitting and approving waivers of supervision fees	*Completed*

DOC Response:

We concur. The NHDOC manages supervision fees and collections in accordance with statute which is addressed in policy and procedure 3.05. The NHDOC is in the process of updating administrative rules to align with our policy.

Observation No. 24

Establish A Records Retention Policy

The Board was not compliant with the State's *Archives and Records Management Act* requiring agencies to establish and maintain a program for the efficient management of the Board's records. It also required agencies to establish retention schedules outlining the length of time records warrant retention, and required agency records to be retained for at least four years.

The Board did not have a records retention policy resulting in the destruction of some Board records. Further, the Board's rules, which required it to delete recordings after one year, conflicted with the State's requirement to retain agency records for at least four years. According to Board staff, limited storage capacity on the Board's network required it to periodically purge audio

recordings of parole release and revocation hearings which, according to State law, were considered part of the Board's records. Consequently, we found some missing or incomplete documentation during our review of Board files.

Incomplete Or Missing Records

RSA 5:37 prohibited records from being "mutilated, *destroyed,* transferred, removed, or otherwise damaged *or disposed of*, *in whole or in part,* except as provided by law." [emphasis added] We reviewed a sample of 179 files consisting of parole release, medical parole, parole revocation, and petitions for a reduction of a parolee's maximum sentence. Thirty-five of the 179 files (20 percent) were missing or incomplete. Specifically:

- Eight files had likely been destroyed because the inmate was deceased. According to Board staff, one staff member had been shredding the files of deceased inmates. Board members and other Board staff reported not being aware of this, and the practice has since stopped.
- Two files pertaining to parole release and ten petitions for the reduction of a parolee's maximum sentence could not be located.
- Six files were missing parts of the record. For example, some files were missing the form documenting the results of the hearing, or information pertaining to a previously denied parole hearing was not included in the file.
- Nine petitions for the reduction of a maximum sentence were incomplete as they were missing Board members' names indicating whether the petition was approved or denied.

Petitions To Reduce A Parolee's Maximum Sentence Not Centrally Located

The Board did not retain copies of petitions filed for the reduction of a parolee's maximum sentence, even though Board action was required for these petitions. Additionally, final copies of the petitions (i.e., after the Board took action) were not centrally retained anywhere within the DOC. Instead, the original petition, along with the result of the Board's decision, was sent back to the PPO filing the petition on the parolee's behalf, where they were supposed to be scanned into FileHold, the DOC's document management system. Of the 55 petitions we sampled, we found 23 final copies of petitions in FileHold. Another six found in FileHold were not finalized, and an additional 26 were not found there at all. We were able to retrieve hardcopies for 16 of these 26 petitions from the district office originating the petition.

Recordings Contained Additional Information Not Found In Parole Files

Statute required agencies to make and maintain records containing adequate documentation of the organization's functions and decisions, while Board administrative rule stated complete records shall be kept on all parolees subject to the Board's supervision. In some cases, we found recordings contained additional information which was not in the parole file. For example, in three of the 11 medical parole files we reviewed (27 percent), the cost of medical treatment, which the Board was required to consider, was only discussed at the hearing and not documented in the file. Additionally, in recordings of five parole release hearings, we found the Board required other specific conditions which were not subsequently added to the parole certificate outlining the

conditions which needed to be followed while on parole. These conditions included resolving outstanding warrants in other jurisdictions, attending substance abuse treatment, not having contact with specific parties, or mandating a period of time on intensive supervision.

We also found discrepancies between the verbatim recordings and some documents in the file. These included:

- At a parole release hearing, the form documenting the results of the hearing indicated the inmate appeared in person; however, the recording indicated the inmate appeared via video.
- At a parole release hearing, the form documenting the results of the hearing indicated the inmate appeared via video; however, the recording indicated the inmate was heard via telephone.
- The form documenting the results of the parole release hearing indicated the inmate was denied parole for lack of a treatment plan; however, Board members did not state this on the recording.
- During a revocation hearing, the Board ordered the parolee seek a substance abuse evaluation within two weeks of release; however, this was not included on the form documenting the results of the hearing or on the certificate outlining parole conditions.

Some Files Contained Another Inmate's Information

During our review, we found instances where files for an inmate we were reviewing contained information for a different inmate. Of the 50 revocation files we reviewed, six contained another inmate's demographic information, violation summary, arrest warrant, notice of revocation, notice indicating the inmate was informed of due process rights, or another inmate's parole certificate. Three Board members we spoke with reported having occasionally received information pertaining to a different inmate in their parole packets.

Missing Board Meeting Minutes

The *Right-to-Know Law* required the Board to maintain meeting minutes and make them available for public inspection within five business days. The law also required meeting minutes to be treated as permanent records, meaning they must be retained in perpetuity. During the audit period, the Board held 17 administrative meetings; however, the Board could not locate meeting minutes for eight dating back to September 2017 meetings. Board staff reported notes for the meetings had been taken, but they were not transcribed into formal minutes.

Recommendations:

We recommend the Board comply with the State's *Archives and Records Management Act* by establishing and codifying record retention policies, procedures, and schedules. As part of this process, the Board should resolve the conflict between its administrative rule requiring recordings be destroyed after one year and State law requiring agency records be retained for a minimum of four years.

In developing a records retention policy, the Board should consider:

- **establishing procedures for retaining and preserving all Board records including records connected with parole release and revocation hearings, and reduction of maximum sentence petitions;**
- **establishing procedures to ensure Board meetings minutes are produced timely and retained as part of the Board's permanent records;**
- **assessing alternative options for preserving verbatim recordings of Board hearings to ensure they are retained for the required four years; and**
- **ensuring all Board staff are trained on the record retention policies.**

We also recommend the Board establish a process to periodically review inmate files for accuracy and completeness by ensuring information determined at parole release and revocation hearings are accurately reflected on the hearing results and the parole certificate.

Board Response:

We concur. The Board will keep recordings and other records in compliance with the law and ensure all Board staff are trained on the record retention policies.

Timeline for the Remediation of Audit Observations

Compliance with & training on records retention policies	*Ongoing*

Observation No. 25

Develop A Process To Record Board Member Votes

Statute required parole records to remain confidential while administrative rule prohibited votes cast by individual Board members from being disclosed "unless ordered by a court of competent jurisdiction…." We did not find instances where Board member votes were clearly disclosed in any files we reviewed or hearings we observed. However, we found the Board did not have a process to record individual votes; therefore making it unable to produce a record of its vote if ordered to by a court.

No Procedures To Record Votes

The Board lacked policies and procedures for recording votes cast by individual Board members during parole release and revocation hearings. As a result, individual votes for each inmate appearing before the Board were not recorded. Although votes were not recorded, some members reported they record their decision on their own parole packet, and the Board has discussed some potential methods of maintaining a record of their vote for each hearing.

Some Board members and staff stated they could possibly produce a record of individual votes by listening to recordings of the hearings to decipher the panel members' voices and determine how each person voted. However, the quality of the recordings we listened to was often poor and discussion was sometimes difficult to follow because of external noises and other conversations within the room. Additionally, discussion among Board members was often muffled and Board members whispered back and forth to each other, making it difficult to be able to discern each Board member's vote. Regardless, administrative rules required the Board to destroy recordings after one year, prohibiting the Board from being able to reconstitute votes in this manner for hearings older than one year.

Comments By Board Members May Have Risked Public Disclosure

According to Board members and Board Counsel, the majority of decisions were made by consensus, but dissent occasionally occurred. While we did not find any instances in the files we reviewed indicating Board members publically disclosed their vote, one Board member we spoke with reported an attempt to place a dissenting vote on the record when disagreeing with the decision. Another Board member we spoke with also reported routinely disclosing dissent.

Although we did not find any instances where Board members *clearly* disclosed their votes, comments in one recording we listened to could have been construed as potential public disclosure of individual votes. In the recording, a Board member voiced concern about the inmate's safety and expressed a preference for the inmate to remain incarcerated under the watch of mental health professionals, rather than seeking outpatient counseling in the community.

Also, at the conclusion of hearings, Board members usually conferred behind folders or by whispering among themselves until a decision was reached. However, we observed Board members also frequently nodded or mouthed their decisions to each other, which could have been noticeable to others in the room during the hearings, risking inadvertent disclosure of their votes.

Recommendation:

We recommend the Board develop a process to record individual Board member votes. The process should include a method to keep individual votes from public disclosure but allow it to be retrieved if ordered to by a court.

Board Response:

We concur. The Board has adopted a form that is used to record individual members' votes. It is maintained in the file for retrieval if ordered by a court.

Timeline for the Remediation of Audit Observations

Record members' individual votes	*Completed*

Performance Measures

Performance measurement is a process where organizational objectives are articulated in measurable goals. Performance measurement aids an organization define what it wants to accomplish through formally measurable goals and objectives while allowing management to track progress towards achieving goals. Additionally, performance measures enable policy makers, administrators, and those responsible for governance with the information needed to improve decision making. One way to develop a performance measurement system involves breaking down program resources, activities, and results into measureable components known as inputs, outputs, and outcomes. Inputs are the resources Board uses to achieve goals. Outputs are the product of processes used to meet program goals, and outcomes are the impact of the service provided. Outcomes measure the degree to which an entity is achieving its goals.

The Board did not collect, review, or analyze data necessary to measure performance. According to the DOC's *"Recidivism Study 2014,"* of all inmates released from prison between January 1 and Dec 31, 2014, 45 percent (576 of 1,280) returned to prison within 36 months. Thirty-one percent of inmates released in 2014 (399 of 1,280) returned to prison for a technical violation of parole, while 14 percent (177 of 1,280) committed a new crime. The Board could collect data to identify and target each offender population to better develop release criteria for each group. For example, by tracking the number of inmates incarcerated for drug offenses who appear for a parole hearing, identifying characteristics of those granted parole (e.g., extent of substance abuse issues, substance abuse programs completed while incarcerated, disciplinary infractions for recent drug use, etc.), the type of parole conditions specifically aimed at substance abuse treatment, the extent of family and community support, and characteristics of those who successfully compete parole without a technical violation or committing a new crime, the Board could start to identify trends in the types of parole conditions or programs which appeared to work. These characteristics could be used to develop parole release criteria for this group of offenders, and could be used as a baseline for establishing performance measures to gauge progress towards its goals of protecting the public from crimes committed by parolees, and ultimately reducing recidivism for this population. Appendix C contains a more detailed example of metrics which could be collected to facilitate such an analysis and how performance measures can be linked to the Board's mission, goals, and objectives.

Observation No. 26

Establish A Performance Measurement System

According to Board members and staff, the overall goal of the Board was to protect public safety. However, the Board had not established a system to evaluate whether its activities adequately mitigated the risk to public safety. Additionally, the Board lacked formal articulation of its goals and objectives, making measurement problematic were it to occur.

The Need To Track Data And Measure Performance

According to the U.S. Government Accountability Office (GAO), performance measurement "focuses on whether a program has achieved its objectives, expressed as measurable performance

standards." A performance measurement system facilitates comparing actual performance levels with pre-established targets to determine whether program results are achieved. Used correctly, performance measurement improves accountability and identifies areas of possible improvement. Additionally, performance measures can help a program define what it wants to accomplish through formally articulated goals and objectives, gauge progress towards meeting these goals, and improve decision-making. Performance measurement may be directed at program processes, the type or quantity of program activities conducted, outputs, the quantity of goods or services produced by a program, or outcomes, the accomplishments or results of a program.

According to the American Correctional Association (ACA) *Standards for Adult Parole Authorities*, a system to collect, maintain, and measure parole outcomes is essential to the function of parole authorities and recommended parole authorities establish a procedure for receiving periodic reports and continuous feedback to monitor parole decisions and policies. Additionally, it recommended feedback about the outcomes of parole decisions be used to review and revise parole decision-making policies and criteria.

Consultant Recommended The Board Establish And Track Performance Measures

In 2012 and 2013, the Board received technical assistance from a consultant to help it streamline some of its processes. The consultant recommended the Board institute parole guidelines and criteria, and collect parole-related data citing data collection and analysis were "critical for the DOC and the Board to have the necessary information relative to the effectiveness of the parole guidelines in supporting an evidence-based decision making process." Further, to determine if it was making parole decisions consistent with evidence-based best practice, which we discuss in Observation No. 3, the Board would "need to capture offender outcome data to assess the validity of its parole guidelines…." The consultant recommended the DOC and Board initiate data collection as soon as possible to assess the outcomes of parole cases as data "empowers the Board and the DOC to monitor changing trends and to pursue refinements to better align it to evidence based practices."

As part of this work, the consultant recommended a series of data indicators the Board should be tracking, citing that indicators are a "critical management tool for the parole board to monitor workload…." Specifically, the consultant stressed the importance of tracking the parole rate, characteristics of those approved for and denied parole, success on parole, and parole violations, and recommended compiling trend data to monitor significant changes in these rates. Once collected, the consultant stated the data should be used to inform the Board about "how closely its decision-making is aligned with evidence based factors related to offender risk…" and to adjust guidelines to enhance its decision-making. By monitoring these data, the consultant cited the DOC and the Board could intercept emerging problems and develop corrective action.

In 2015, the consultant returned to assess the Board's progress and cited it must "reinforce the critical need for the parole board to, at a minimum, maintain an excel spreadsheet of decisional data to track parole guideline recommendations, the parole decisions and conformance and departure rates from the guidelines with reasons for departure, and track overall parole grant rates." The consultant also noted "The parole board agreed to begin to manually collect the parole

guidelines data using an excel spreadsheet to capture the basic decisional data for the board's monthly review until the guidelines are automated."

Current Board Efforts

As discussed in Observation No. 3, parole guidelines were not automated as recommended by the consultant, and data necessary to measure performance were largely unavailable. Additionally, the Board did not manually track any data indicators as recommended by the consultant. The Board received monthly reports on the number of hearings held, the outcome of these hearings, and the main reason the inmate was denied parole or why parole was revoked; however, it did not capture other information the consultant identified as necessary to review whether the criteria used to release inmates on parole were appropriate.

Some Board members expressed a reluctance to capture and review program data, expressing concerns that analyzing such data would remove discretion and adversely influence Board decisions. For example, if the data showed the Board was paroling inmates at a high rate, there may be pressure to increase parole denials. However, we note the Board Chair already tracked and reviewed this information through monthly reports provided by the DOC. Regardless, the Board was unable to demonstrate its current practices and parole criteria adequately helped inmates succeed on parole or mitigate the risk to public safety.

Recommendations:

We recommend the Board establish a process to begin data collection and analysis to eventually support a performance measurement system. The Board should begin identifying data necessary to evaluate whether its parole criteria are appropriate, what data are currently available, and what additional data may be needed.

Once the Board identifies these data elements, we recommend it collaborate with the DOC to determine how data can be collected and how data reporting can be automated.

Board Response:

We concur. The executive assistant maintains an Excel spreadsheet listing parole hearings and decisions, and some partial data is maintained by DOC on the forms we currently use. We will consider some of the suggested performance measures outlined in Appendix B but will need additional staff and IT support to identify and collect data on the myriad of variables involved in updating guidelines for release and evaluating success on parole.

Timeline for Remediation of Audit Observations

Identify data to be collected	*January 2020*
Automate data reporting	*Ongoing*

DOC Response:

We concur. The NHDOC will collaborate with the NHAPB to provide the data sets needed that are available through our existing NHDOC resources.

OTHER ISSUE AND CONCERN

In this section, we present issues we considered noteworthy, but did not develop into formal observations. The New Hampshire Adult Parole Board (Board), Department of Corrections (DOC), and the Legislature may wish to consider whether these issues deserve further study or action.

Consider Establishing Board Member Qualifications In Statute

The American Correctional Association's (ACA) *Standards for Adult Parole Authorities* states it is important for members to serve for at least five years and essential for a paroling authority to have at least three members who are chosen through a system defined by statute or administrative policy, with explicitly defined criteria. While New Hampshire statute established a Board consisting of nine members, appointed by the Governor and Council to no more than two consecutive five-year terms, statute did not establish criteria or qualifications for Board members.

National Guidance Recommends Establishing Qualifications For Board Members

According to the ACA, it is imperative that there are explicitly established criteria for the appointment of Board members, with further guidance suggesting at least two thirds of the Board should have at least three years' experience in criminal justice or equivalent experience in a related profession. Additionally, a 2016 study by the University of Minnesota Law School's Robina Institute of Criminal Law and Criminal Justice found 25 out of the 45 states surveyed (56 percent) had qualifications for their Board members established in statute, including education or experience requirements, with 14 specifying a set number of years of criminal justice experience required. Although the Robina Institute's data suggested paroling authorities on the whole possess educational credentials qualifying them to make decisions pertaining to their duties, it recommended statutory language outlining education and experience requirements for members which "affirm or reaffirm their commitment to securing properly credentialed and qualified individuals as board members."

Other States' Paroling Authorities

A 2017 report by the National Conference of State Legislatures found all New England States, with the exception of New Hampshire, had some type of statutory requirement to serve as a board member. Other nearby states including New York, New Jersey, Maryland, Pennsylvania, and Delaware also had statutorily established education or professional qualifications for their members. New England states required board members possess the following:

- Connecticut required all members to have education, training, or experience in community corrections, parole, or criminal justice. It required one member be a psychologist, and required all members to receive training on criminal justice and factors to consider when deciding parole.

- Maine required members to have special training or experience in law, sociology, or psychology.
- Massachusetts required one of its members to have experience in forensic psychology.
- Rhode Island required the board be composed of a: professional qualified psychiatrist, member from the state's bar, person trained in correctional work, and law enforcement officer. The chair must also possess a bachelor's degree and have criminal justice experience.
- Vermont required the board have knowledge and experience in correctional treatment, crime prevention, or human relations. It also required new board members receive training from the Association of Paroling Authorities International, an organization which researches best practice and current issues in the parole field.

Qualifications Could Be Beneficial According To Some Members

As of January 2019, Board members possessed backgrounds in the law, law enforcement, and corrections. Four Board members agreed having qualifications to appoint members could be beneficial, with some members citing needed qualifications such as law, criminal justice, substance abuse, and mental health experience. One Board member also suggested having a member of the public may also bring a more diverse perspective to the Board. Two Board members were notably opposed to establishing criteria in statute; however, one still cited certain types of experience that would be beneficial, such as additional members with legal experience.

As discussed in Observation No. 11, the Board traditionally utilized members who were attorneys to fulfill the requirement an attorney of the Board be present at all revocation hearings. Until June 2018, the Board had only one member who was an attorney. Despite being on the Board since October 2017, this member had participated in only one parole release hearing between October 2017 and November 2018, and was generally scheduled for parole revocation hearings to fulfill the requirement.

The Legislature may wish to consider whether establishing criteria for Board members in statute would be appropriate.

Board Response:

The Board performed at its highest level when membership included attorneys with criminal justice experience, as well as those with experience in law enforcement, mental health, substance misuse treatment, legislation, and social work. While this mix of skills is desirable, if it were required by statute it may be difficult to attract qualified professionals to make the time commitment when the compensation is only $100 per day. Further, if there were specific qualifications for membership it might take a while to fill the seats, leaving the Board short-handed for months.

APPENDIX A
SCOPE, OBJECTIVES, AND METHODOLOGY

Scope And Objectives

In December 2017, the Fiscal Committee approved a Legislative Performance Audit and Oversight Committee (LPAOC) recommendation to conduct a performance audit of the New Hampshire Adult Parole Board (Board), which is administratively attached to the Department of Corrections (DOC). We held an entrance conference with the DOC and the Board at the end of May 2018. The LPAOC approved our scope statement at its July 2018 meeting. Our audit was designed to answer the following question:

Did the Board operate efficiently and effectively in State fiscal years 2017 and 2018?

Specifically, we evaluated the efficiency and effectiveness of the:

- Board's interactions with the DOC,
- Board's process for gathering inmate information, and
- parole release and revocation process.

Our audit did not attempt to re-evaluate individual parole or revocation decisions made by the Board during the audit period.

Methodology

To gain an understanding of the Board's activities and its operating and control environment, we:

- reviewed State laws affecting Board responsibilities and activities, administrative rules, the Board's budget information and personnel supplemental job descriptions, court cases affecting the Board's activities, Board policies and procedures, DOC policies and procedures affecting Board processes, New Hampshire reports and studies pertaining to Board activities, news articles regarding Board activities, and prior LBA audits affecting Board activities;
- reviewed audits of other states' paroling authorities, and national research on parole and paroling authorities;
- reviewed and analyzed DOC reports pertaining to hearings conducted by the Board;
- interviewed eight Board members, Board staff, the Board's Department of Justice attorney, the DOC Commissioner, DOC staff with duties pertaining to Board activities, and three stakeholder groups;
- observed four parole release and three parole revocation hearings, and five of the Board's monthly administrative meetings; and
- toured the New Hampshire State Prison for Men, New Hampshire Correctional Facility for Women, the Transitional Work Center, and the North End House transitional housing unit.

To determine the efficiency and effectiveness of the Board's activities and relevant internal controls, we:

- conducted reviews of a random sample of parole release and revocation files, medical parole files, and petitions for reduction of a parolee's maximum sentence;
- conducted a review of a random sample of inmates to determine whether they were given the opportunity for a parole release hearing prior to their minimum parole date; and
- contacted nearby states' paroling authorities to determine their processes.

Review Of Release, Revocation, And Reduction Of Maximum Sentence Files

We received a list of 3,987 inmate hearings occurring before the Board between July 1, 2016 and June 30, 2018. We sorted the hearings by type and copied each of the following types into separate spreadsheets: "parole hearing," "revocation hearing," and "reduction of maximum sentences" for sample selection. We excluded 80 reconsideration, 18 disciplinary, and 72 review hearings from our sample as they were sporadically held and no hardcopy files or documents were generated for these hearings. We were left with 2,374 parole release, 1,292 revocation, and 151 reduction of maximum sentence hearings. For each type of hearing to be sampled, we assigned a random number to each record and sorted the files by random number in descending order.

The number of files were reviewed was determined by the amount of work needed to verify the information for each file type. We used a judgmental sample to determine how many files to sample. We did not select the number of files based on statistical significance, and cannot project the results to the rest of the population.

We collected data between August and October 2018 using hardcopy files retained by the Board for each parolee currently on supervision, and compared the information included in the files to information found in the DOC's offender management system (CORIS) and the file management system (FileHold). The Auditor-in-Charge also reviewed information in the DOC's medical records system (TechCare) and compared this information to that found in the hardcopy files, CORIS, and FileHold. One auditor collected the initial information form the hardcopy files, CORIS, and FileHold. The Auditor-in-Charge reviewed data collected for every file comparing them to the same sources as the auditor who collected it, and noted any additional information found in TechCare where appropriate.

Review Of Parole Release Files

We randomly selected the first 54 of the 2,374 parole release files for review. However, data for 13 files could not be collected because: the Board had destroyed seven hardcopy files and could not locate two files; two inmates cancelled their hearings and did not have another hearing during the audit period; one case was before the Board for medical parole so we included it in the medical parole review instead; and one did not fit our criteria for review as it was not a release hearing. In total, we were able to collect data for 41 parole release files.

Our review of parole release files was designed to assess: compliance with state laws and Board rules, whether inmate information included as part of the packet Board members received prior to

hearings was complete and accurate, whether Board-imposed conditions inmates must follow as part of their parole were accurately reflected in parole certificate, and how victim input was incorporated into the Board's parole decision.

Our sample was not designed to be statistically representative and we did not intend to project the results to the general population of release hearings. We collected approximately 160 individual data elements, some of which were not applicable to all inmates in this population. We determined we would not be able to collect enough information for all data elements we were analyzing without reviewing a large number of files.

Review Of Parole Revocation Files

We randomly selected the first 52 of the 1,292 parole revocation files for review from this list. Three inmates who appeared for parole release hearings also had a parole revocation hearing during the audit period, so we included these three in this sample as well. However, data for five files could not be collected because the Board had destroyed the file. In total, we were able to collect data for 50 revocation release files.

Our review of parole revocation files was designed to assess compliance with state laws and Board rules and whether the Board was informed of all violations committed by parolees when appearing for a revocation hearing.

Our sample was not designed to be statistically representative and we did not intend to project the results to the general population of release hearings. We collected approximately 80 individual data elements, some of which were not applicable to all inmates in this population. We determined we would not be able to collect enough information for all data elements we were analyzing without reviewing a large number of files.

Review Of Reduction Of Maximum Sentence Files

We randomly selected the first 56 of the 151 reduction of maximum sentence files for review. However, one file was a duplicate of another already in our sample, so we excluded this case from our sample, leaving 55 files for review. Neither the Board nor the DOC could locate ten of the petitions, so we excluded these ten from our analysis. In total, we were able to collect data for 45 reduction of maximum sentence files.

Our review of reduction of maximum sentence files was designed to assess whether the Board had an adequate process for approving petitions for reduction of maximum sentences. Our sample was not designed to be statistically representative and we did not intend to project the results to the general population of reduction of maximum sentence files.

Review Of Medical Parole Files

Although considered a parole release hearing, statute required medical parolees to be reviewed using a different set of factors. We received a list of 15 medical parole cases from the DOC. The Board had destroyed two deceased inmates' files, one inmate who had been recommended as a

medical parole case was actually reviewed as a standard parole release, and one was found to not meet the criteria for medical parole and was not reviewed. We did not use sampling for this population. Instead we reviewed and collected information for all 11 cases brought before the Board for medical parole between July 1, 2017 and June 30, 2018.

Review Of Files To Determine Whether Inmates Were Given The Opportunity For A Parole Hearings Prior To Their Minimum

We received a file from the DOC containing 2,270 inmates with minimum parole dates between July 1, 2017 and June 30, 2018, which was sorted by the minimum parole date. Using a sample size generator, we calculated a sample size based on a 90 percent confidence interval and 10 percent margin of error, returning a sample size of 66 files. We increased the sample size to 75 to account for potential missing files. We assigned a random number to each record using MS Excel's random number generator, sorted the records by the random number in descending order, and selected the first 75 files for review. Three inmates in our original sample were not incarcerated in New Hampshire as they were transferred for parole supervision from other states. Another inmate was on probation and had never been incarcerated. Since these cases would not have a hearing in front of the Board, we replaced these four inmates with the next four in our sample.

Between August and October 2018, using information found in CORIS, we collected information on whether the inmate was given the opportunity for a parole hearing by noting the date of the parole hearing. If an inmate did not have a parole hearing prior to their minimum, we reviewed all available CORIS notes to determine whether the inmate postponed or declined their hearing. We also captured the outcome of the hearing (i.e., whether parole was granted or denied). For inmates who were denied parole at their initial parole hearing, we reviewed whether any subsequent hearings occurred, and recorded the result of those hearings.

Our results were based on a statistically valid sample; therefore, the results could be projected to the population.

APPENDIX B
BOARD RESPONSE TO AUDIT

Christopher Sununu
Governor

State of New Hampshire

Adult Parole Board
NH State Prison
CONCORD, NH 03302-0014
603-271-2569 FAX: 603-271-6179
TDD Access: 1-800-735-2964

Donna Sytek
Chairman

Ashlyn St. Germain
Executive Assistant

March 15, 2019

The Honorable Mary Jane Wallner, Chairman
Joint Legislative Fiscal Committee
Legislative Office Building Room 210-211
Concord, NH 03301

Dear Representative Wallner:

The Adult Parole Board appreciates the thorough review of our operation by the excellent and professional team from the LBA Audit Division, led by Vilay Skidds.

As the observations indicate, the Board has been performing its core functions with minimal formal procedures and administrative rules, relying on the institutional memory of senior staff and members and developing new policies by consensus. The audit provides a clear roadmap for the Board to develop and formally adopt necessary policies and administrative rules so that there will be consistent application as personnel turn over. Indeed, we have already made some of the changes recommended in the audit.

I would note, however, that our current 4.5 employees are struggling to handle the day-to-day workload. It is clear that we need additional staff in order to free up the executive assistant to write the policies and procedures recommended in the audit. Additionally, the Board will require the assistance of a qualified professional to draft administrative rules since we have no one on staff with this expertise.

Implementation of some other audit recommendations will depend on increased support from the Department of Corrections to which the Board is administratively attached. For example, the current IT system does not align with our needs and does not track information in a format that is useful to members. There should also be improved coordination between our office and DOC when developing and presenting our budget.

Since I was appointed chairman in 2012 the Board has made significant progress in professionalizing our operation, but we still have a long way to go. With the recommendations of the audit in hand we are committed to improving our efficiency and effectiveness as we carry out our mandate to aid prisoners in their transition back to society while also protecting the public from criminal acts by parolees.

Should you have any questions, please contact our Executive Assistant Ashlyn St. Germain at (603) 271-2569 or ashlyn.stgermain@doc.nh.gov.

Respectfully,

Donna Sytek

Donna Sytek - Chairman

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APPENDIX C
POTENTIAL BOARD PERFORMANCE MEASURES

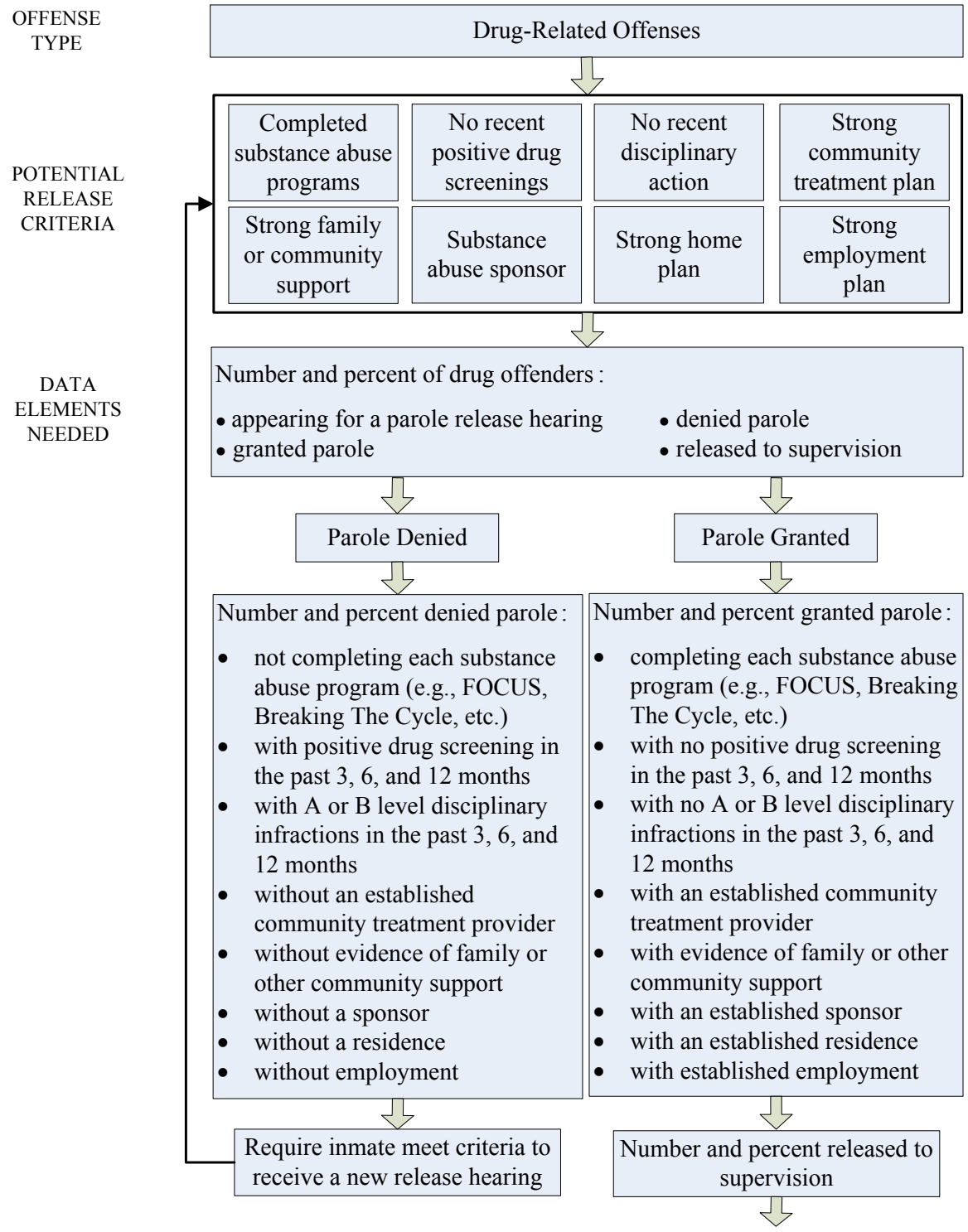
Performance measurement focuses on whether a program achieved its goals and objectives, which are expressed as measurable standards. A performance measurement system facilitates comparing actual performance levels to pre-established targets (i.e., goals and objectives) to determine whether program results were achieved. Performance measurement systems require identifying the agency's mission (i.e., what it wants to accomplish), establishing measureable goals and objectives for achieving the mission (i.e., how it will accomplish the mission), and establishing output and outcome measures to gauge agency progress towards its goals and objectives.

Figure 1 shows, for demonstration purposes, an example of how the New Hampshire Adult Parole Board (Board) can begin to collect and use metrics to help it align its parole release criteria with characteristics of those who successfully complete parole. The example shows potential release criteria for those committed of drug offenses. While the specifics of each case will vary, the Board could begin to collect common characteristics of drug offenders who are successful on parole, and use it to better inform its decision making criteria. The top level describes examples of potential criteria which could be used to evaluate drug offenders for parole release including completing substance abuse treatment in prison, clean drug screenings for a certain period of time, a community treatment plan, and family or community support. These criteria are not meant to be all inclusive, but are used for demonstration purposes only. Data elements which could be collected include the number and percent of drug offenders who appear for a parole release hearing, denied parole, granted parole, and eventually released to supervision, as well as those meeting each of the release criteria. Once released to supervision, those who successfully complete supervision (i.e., without parole being revoked) are reviewed for common characteristics. These characteristics could then be used to develop a better picture of commonalities in those succeeding on parole, and should be used to update release criteria or establish parole conditions to help drug offenders be more successful on parole. Offenders denied parole should also be reviewed to determine release criteria they did not meet. For example, if the Board determines a majority of offenders denied parole are denied because they have not completed substance abuse treatment programs, it could work with the DOC to ensure those programs are more accessible to drug offenders.

Once a data collection system has been established, Figure 2 identifies goals, objectives, and measures intended to decrease the likelihood of drug offenders violating parole by requiring treatment prior to and after release. Criteria from Figure 1, such as completing substance abuse treatment while in prison, no recent positive drug screenings, and a strong community treatment plan, are used to establish goals including increasing the number of offenders who complete substance abuse treatment in prison prior to release, continue treatment while on supervision, and are released with no positive drug screenings within, for example, six months prior to release. Objectives include, for example, increasing, annually, the percent of offenders released who completed substance abuse treatment, did not have a positive drug screening, and continued treatment while on supervision. These targets are compared to actual data for those released each year to determine whether the objectives were met.

Figure 1

Potential Board Release Criteria



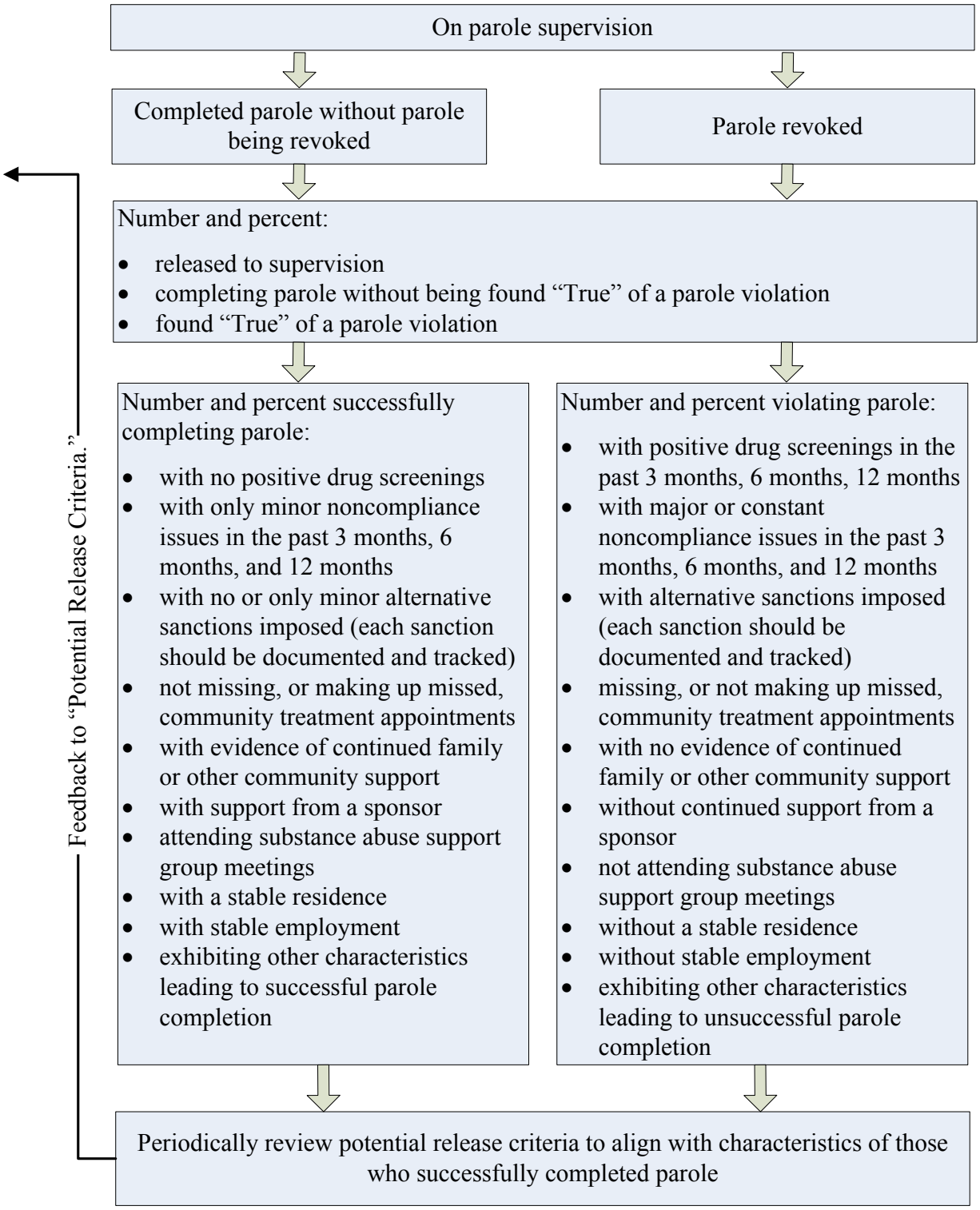
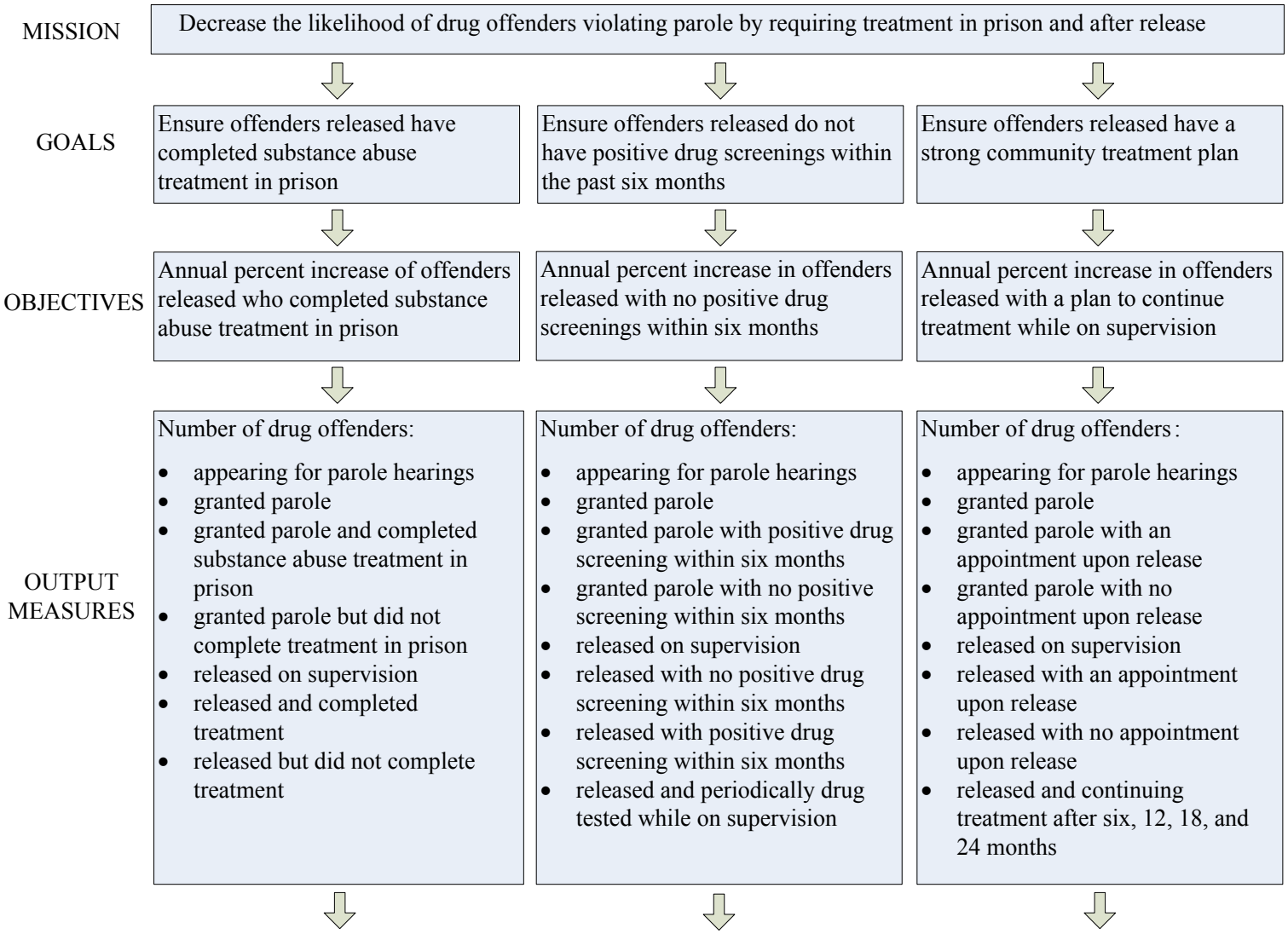
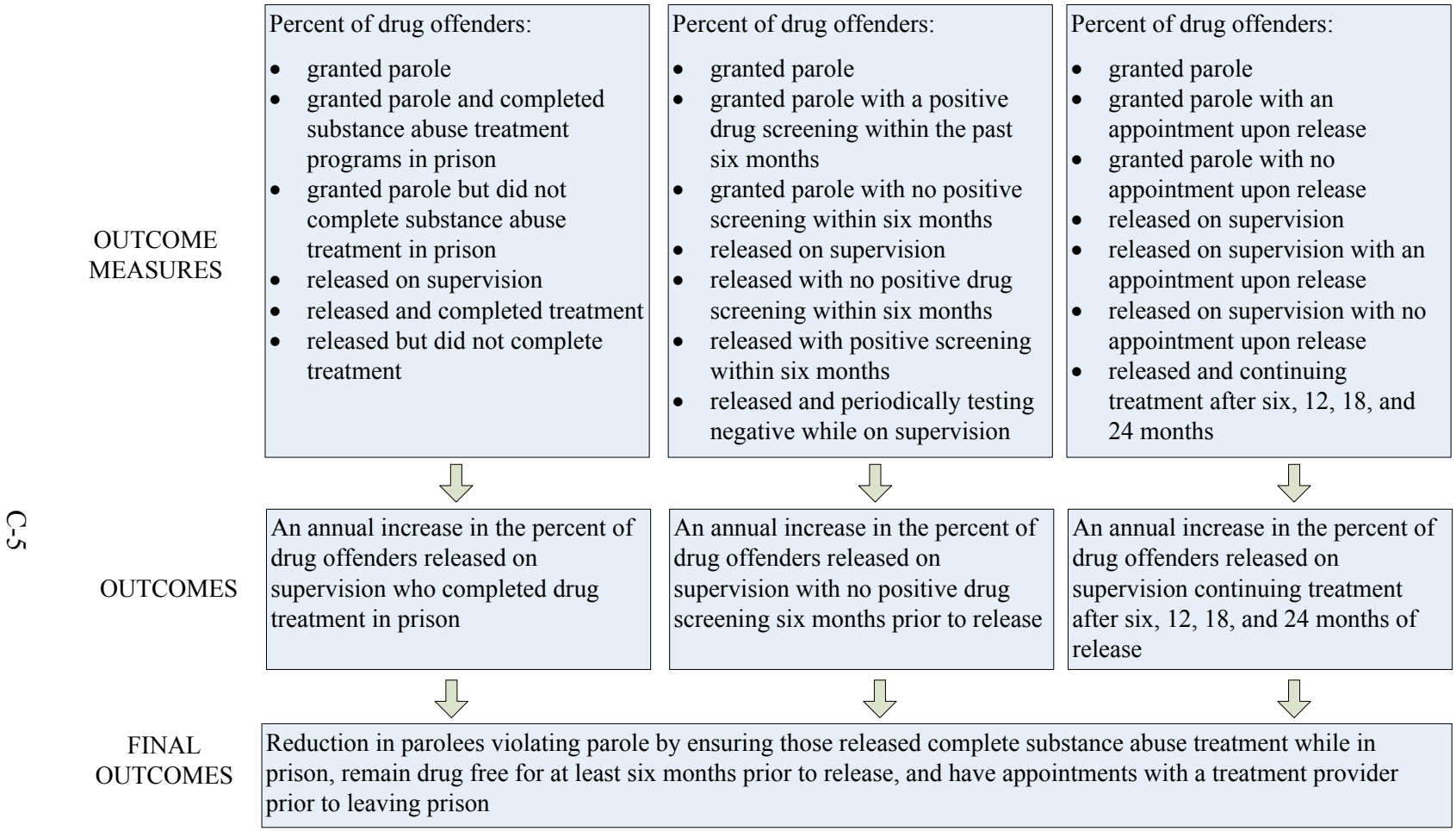

On parole supervision
Completed parole without parole being revoked
Parole revoked
Number and percent:
• released to supervision
• completing parole without being found "True" of a parole violation
• found "True" of a parole violation
Number and percent successfully completing parole:
• with no positive drug screenings
• with only minor noncompliance issues in the past 3 months, 6 months, and 12 months
• with no or only minor alternative sanctions imposed (each sanction should be documented and tracked)
• not missing, or making up missed, community treatment appointments
• with evidence of continued family or other community support
• with support from a sponsor
• attending substance abuse support group meetings
• with a stable residence
• with stable employment
• exhibiting other characteristics leading to successful parole completion
Number and percent violating parole:
• with positive drug screenings in the past 3 months, 6 months, 12 months
• with major or constant noncompliance issues in the past 3 months, 6 months, and 12 months
• with alternative sanctions imposed (each sanction should be documented and tracked)
• missing, or not making up missed, community treatment appointments
• with no evidence of continued family or other community support
• without continued support from a sponsor
• not attending substance abuse support group meetings
• without a stable residence
• without stable employment
• exhibiting other characteristics leading to unsuccessful parole completion
Periodically review potential release criteria to align with characteristics of those who successfully completed parole
Feedback to "Potential Release Criteria."

Figure 2

Potential Performance Measurement Model:
Decrease The Likelihood Of Drug Offenders Violating Parole




OUTCOME MEASURES
Percent of drug offenders:
granted parole
granted parole and completed substance abuse treatment programs in prison
granted parole but did not complete substance abuse treatment in prison
released on supervision
released and completed treatment
released but did not complete treatment
Percent of drug offenders:
granted parole
granted parole with a positive drug screening within the past six months
granted parole with no positive screening within six months
released on supervision
released with no positive drug screening within six months
released with positive screening within six months
released and periodically testing negative while on supervision
Percent of drug offenders:
granted parole
granted parole with an appointment upon release
granted parole with no appointment upon release
released on supervision
released on supervision with an appointment upon release
released on supervision with no appointment upon release
released and continuing treatment after six, 12, 18, and 24 months
OUTCOMES
An annual increase in the percent of drug offenders released on supervision who completed drug treatment in prison
An annual increase in the percent of drug offenders released on supervision with no positive drug screening six months prior to release
An annual increase in the percent of drug offenders released on supervision continuing treatment after six, 12, 18, and 24 months of release
FINAL OUTCOMES
Reduction in parolees violating parole by ensuring those released complete substance abuse treatment while in prison, remain drug free for at least six months prior to release, and have appointments with a treatment provider prior to leaving prison

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APPENDIX D
STATUS OF PRIOR AUDIT FINDINGS

Two prior LBA audits contained observations affecting this report: our *Prison Expansion Performance Audit* report issued in April 1992 and our *Department of Corrections Financial And Compliance Audit Report For The Nine Months Ended March 31, 2010* issued in November 2010.

A copy of both prior reports can be accessed online at our website:
http://www.gencourt.state.nh.us/lba/default.aspx

The following is the status of four of the 37 observations applicable to this audit from our 1992 audit.

No.	Title	Status	
14.	Parole Discharge And Transfers *The New Hampshire Adult Parole Board (Board) was not timely in notifying Department of Corrections (DOC) officials when granting early discharge (i.e., reduction of maximum sentences) or when inmates were paroled to another state.*	●	●
15.	Summary Information For Parole Hearings (See current Observations No. 1, No. 2, and No. 3) *Board members were not receiving summary information on inmates scheduled for parole hearings in a timely manner. Additionally, information provided was lengthy and not provided in a way that would allow meaningful deliberation.*	●	○
16.	Delivery Of Parole Summaries *Parole summaries (i.e., parole packets) for 25 to 30 inmates were not provided to Board members until 24 to 72 hours before hearings. Summaries were hand-delivered to Board members resulting in the Board paying for mileage reimbursement.*	●	●
17.	DOC-Parole Board Cooperation (See current Observation No. 15) *The undefined relationship between the Board and DOC led to communication and cooperation problems about each entity's roles and responsibilities.*	○	○

The following is the status of one of the 32 observations applicable to this audit found in our 2010 audit.

No.	Title	Status
28.	Supervision Fees Should Be Established By Courts And Parole Board (See current Observation No. 23) *The Board did not establish supervision fees, as required by statute. Instead, the DOC established these fees in its policies.*	● ○

Status Key			Count
Resolved	●	●	2
Remediation In Process (Action beyond meeting and discussion)	●	○	2
Unresolved	○	○	1