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September 27, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Ms. Gretchen McClellan-Singh, Executive Director  
Arizona Board of Executive Clemency

Transmitted herewith is the report *Performance Audit and Sunset Review of the Arizona Board of Executive Clemency*. This audit was conducted by the independent firm Sjoberg Evashenk Consulting, Inc. under contract with the Arizona Auditor General and was in response to a November 21, 2022, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Executive Clemency agrees with all the findings and plans to implement all the recommendations. My Office has contracted with Sjoberg Evashenk Consulting, Inc. to follow up with the Arizona Board of Executive Clemency in 6 months to assess its progress in implementing the recommendations. I express my appreciation to Executive Director McClellan-Singh, the Board members, and Board staff for their cooperation and assistance throughout the audit.

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

Sincerely,

*Lindsey A. Perry*

Lindsey A. Perry, CPA, CFE  
Auditor General

cc: Arizona Board of Executive Clemency members



September 24, 2024

Lindsey A. Perry, Auditor General  
State of Arizona  
2910 N. 44<sup>th</sup> Street, Ste. 410  
Phoenix, AZ 85018

Dear Ms. Perry:

Sjoberg Evashenk Consulting is pleased to submit our report containing the results of the 2024 Performance Audit and Sunset Review of the Arizona Board of Executive Clemency (Board). We conducted this audit on behalf of the Arizona Office of the Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee.

The objectives of this audit were to evaluate whether the Board complied with State conflict-of-interest requirements, sent victim notifications within statutory time frames, scheduled revocation hearings in a timely manner, and adopted a structured decision-making process for parole and revocation decisions. This report also provides responses to the statutory sunset factors and our recommendations for improvement.

We appreciate the professionalism and cooperation exhibited throughout the course of this audit by the Board's members, Executive Director McClellan-Singh, and Board staff. Also, we thank you for the opportunity to have been of service to the Office of the Auditor General as it has been our pleasure to work with you and your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "G Skiles".

George Skiles, Partner  
Sjoberg Evashenk Consulting, Inc.

# Arizona Auditor General

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## Performance Audit and Sunset Review of the Arizona Board of Executive Clemency

**September 2024**



### Arizona Board of Executive Clemency (Board)

Board took steps to meet some statutory responsibilities we reviewed, including sending victim notifications within statutory time frames, but did not comply with some State conflict-of-interest requirements, increasing the risk that Board members and employees had not disclosed substantial interests that might influence their official conduct; did not always timely schedule revocation hearings, increasing its risk of violating inmates' right to due process; and did not adopt a structured decision-making process, despite prior recommendations to do so.

#### Audit purpose

To evaluate whether the Board (1) complied with State conflict-of-interest requirements, (2) sent victim notifications within statutory time frames, (3) scheduled revocation hearings in a timely manner, and (4) adopted a structured decision-making process for parole and revocation decisions, and respond to the statutory sunset factors.

#### Key findings

The Board:

- Is statutorily responsible for making clemency recommendations and holding other hearings for inmates convicted of felony offenses, including revocation hearings for inmates who have violated the conditions of release for parole or community supervision.
- Sent victim notifications of inmates' possible release we reviewed within statutorily required time frames.
- Did not comply with some State conflict-of-interest requirements or fully align its conflict-of-interest process with recommended practices, increasing the risk that Board members and employees had not disclosed substantial interests that might influence their official conduct.
- Did not schedule one-third of 933 revocation hearings it held for warrants received in fiscal year 2023 within 60 days of inmates' arrest and return to custody, as required by federal case law and Board policy, increasing the risk of inmates suing the State for due process violations and potentially increasing State costs if inmates who may eventually be released are held longer in prison while awaiting a hearing.
- Has not adopted a structured decision-making process to help ensure its parole and revocation decisions are accurate and protect public safety in the most effective manner, despite prior recommendations it do so.

#### Key recommendations

The Board should:

- Revise and implement its conflict-of-interest policies to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices.
- Hold revocation hearings within 60 days of an inmate's arrest and return to custody.
- Develop and implement a structured decision-making model appropriate for use in Arizona to assist Board members in reaching consistent and accurate decisions.

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# Introduction

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On behalf of the Arizona Auditor General, Sjoberg Evashenk Consulting has completed a performance audit and sunset review of the Arizona Board of Executive Clemency (Board). This performance audit and sunset review evaluated whether the Board (1) complied with State conflict-of-interest requirements, (2) sent victim notifications within statutory time frames, (3) scheduled revocation hearings in a timely manner, and (4) adopted a structured decision-making process for parole and revocation decisions. This report also provides responses to the statutory sunset factors.

## History, mission, and responsibilities

In 1993, the Board of Executive Clemency was established and was charged with continuing to conduct hearings regarding clemency and non-clemency matters for inmates convicted of felony offenses.<sup>1</sup>

The Board's key responsibilities include:

- **Conducting Clemency Hearings—**

According to A.R.S. §31-402(A)(C), the Board is responsible for considering and deciding on clemency applications from inmates for reprieves, commutations, and pardons (see Key Terms textbox, page 4).<sup>2</sup> If the Board votes in favor of granting clemency, the Board must forward its recommendation to the Governor for review and final decision. Commutation hearings represent the most common type of clemency hearing held by the Board and are distinguished by two separate phases, Phase 1 and Phase 2. During a Phase 1 hearing, the Board considers the information in the application to determine if the inmate meets the criteria for commutation—this hearing is conducted without the inmate being present.<sup>3,4</sup> If the Board denies the application, the inmate may not re-apply for commutation for three years from the date of denial; alternatively, if the Board finds that the application merits additional discussion, the Board will

### MISSION

To ensure public safety by considering and granting parole to inmates who are certified by the Arizona Department of Corrections, Rehabilitation & Reentry (ADCRR) and who appear not to pose a threat to society and recommending to the Governor only those executive clemency actions that are in the best interests of the citizens of Arizona.

Source: Auditor staff review of Board website.

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<sup>1</sup> In 1993, the Arizona State Legislature passed Laws 1993, 1st Regular Session, Chapter 255, §3, which abolished parole for persons who committed felony offenses on or after January 1, 1994, and renamed the Board of Pardons and Paroles to the Board of Executive Clemency.

<sup>2</sup> According to A.R.S. §31-402(A), a reprieve, commutation, or pardon may not be granted by the Governor unless first recommended by the Board.

<sup>3</sup> Information that may be considered by the Board includes the application, sentencing documentation, Presentence Investigation Report, past criminal history, facts of the offense(s) presented to the court, plea agreement if applicable, institutional behavior record, and any other documents provided by officials and/or interested parties.

<sup>4</sup> Criteria the Board considers includes that inmates are statutorily eligible, that inmates' sentences do not require a minimum amount of time to be served, that there appears to be a basis for clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the inmate, and that there is substantial probability that when released the inmate will conform their conduct to the requirements of the law.

hold a Phase 2 hearing.<sup>5</sup> During the Phase 2 hearing, the Board will conduct a hearing with the inmate present and will vote to either deny the commutation application or recommend a reduction of sentence to the Governor.<sup>6</sup> Between fiscal year 2021 and fiscal year 2023, the Board held 621 clemency hearings, of which 596 were commutation hearings resulting in 17 recommendations for commutation to the Governor.

## Key Terms

**Absolute Discharge:** A release of a parolee from all forms of supervision.

**Community Supervision:** A period of supervised release outside of prison for inmates convicted of crimes committed on or after January 1, 1994, in accordance with Truth in Sentencing laws. Unlike parole, which applies to crimes committed prior to 1994, community supervision requires offenders to serve at least 85 percent of their sentence before being eligible. The individual must comply with all terms and conditions of their release to remain in the community.

**Commutation:** A commutation of sentence is a change or modification of a sentence imposed by the court, such as ending an inmate's incarceration or reducing the duration of an inmate's sentence. The Governor may only grant a commutation of sentence upon recommendation of the Board.

**Home Arrest:** The conditional release of a parolee to a residence with the use of electronic monitoring.

**Pardon:** An act of grace, which absolves a convicted felon of the legal consequences of their crime and conviction.

**Parole:** A conditional release from incarceration which entitles inmates who committed crimes before January 1, 1994 to serve the remainder of their term outside the confines of a penal institution so long as they satisfactorily comply with all terms and conditions of their release and supervision requirements. After completing a period of their term as defined by A.R.S. §41-1604.09, individuals who committed crimes prior to January 1, 1994, are certified as eligible for parole by the ADCRR and referred to the Board for a parole hearing.

**Probable Cause Hearing:** A legal proceeding in which an initial determination is made regarding whether sufficient evidence exists to believe that an individual has committed a violation or crime. The Board holds a probable cause hearing prior to a revocation hearing to determine if there is cause to revoke an inmate's parole or community supervision.

**Reprieve:** A delay or temporary suspension of the carrying out of punishment.

**Revocation:** An action resulting from an inmate on release status violating the conditions of release for parole or community supervision and ADCRR issuing a warrant of arrest.

Source: Auditor-generated using the definitions obtained from the Board's website and Recission, Revocation, Modification, and Absolute Discharge Hearing policies.

- **Conducting Non-Clemency Hearings**—In addition to holding clemency hearings, the Board is responsible for holding non-clemency hearings, including hearings concerning parole and/or home arrest, revocation of parole/community supervision for violation of the terms and conditions of release, absolute discharge from parole, and modification of release conditions (see Key Terms textbox for more information on various types of hearings).<sup>7</sup> The Board's responsibilities for revocation hearings include reviewing an inmate's community supervision/parole violations and determining whether the

<sup>5</sup> According to A.R.S. §31-403, certain statutory offenses for which inmates may seek to apply for commutation, such as serious physical injury or a dangerous crime against children, shall not be considered by the Board for 5 years after the Board's denial of the application. The Board may also lengthen the period of time before an inmate can reapply for commutation.

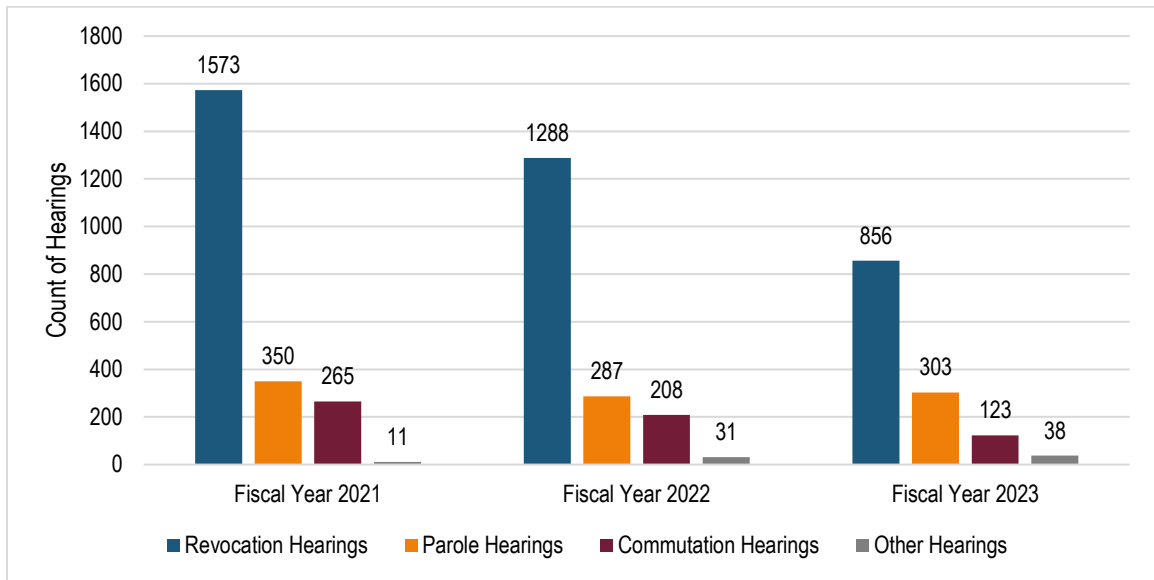
<sup>6</sup> If the Board's recommendation for reduction of sentence is unanimous, the Governor must make a determination on the Board's recommendation within 90 days. If the Board's recommendation for reduction of sentence is not unanimous, the Governor may make the final decision at a time of the Governor's convenience.

<sup>7</sup> A.R.S. §31-402(C)(5) authorizes the Board to consider whether an inmate violated the terms and conditions of community supervision and determine whether to revoke, modify, or continue the inmate's conditional release. Similarly, pursuant to A.R.S. §31-411.01(D), the Board reviews parole violations.

inmate who has been rearrested should remain in the community or return to incarceration. Revocation hearings accounted for 70 percent of all hearings held by the Board during fiscal years 2021 through 2023. During fiscal years 2021 through 2023, the Board held 3,717 revocation hearings (see Exhibit 1).

Exhibit 1 provides an overview of the number of hearings, by hearing type, held by the Board in fiscal years 2021 through 2023.

**EXHIBIT 1. ARIZONA BOARD OF EXECUTIVE CLEMENCY ANNUAL HEARING TOTALS<sup>A</sup>**



Source: Auditor-generated from the Board’s annual reports for fiscal years 2021, 2022, and 2023.

Note: <sup>A</sup>Other Hearings, as noted above, includes less frequent hearings, such as hearings for absolute discharge, pardons, and clemency hearings concerning inmates sentenced to death.

- **Notifying Victims**—If a victim has made a request for post-conviction notices, statute requires the Board to notify the victim if a post-conviction early release is being considered:
  - At least 15 days before any hearing in which a post-conviction release is being considered, such as hearings for commutation, absolute discharge from imprisonment, parole, or home arrest.<sup>8</sup>
  - Within 15 days after the Board reaches its decision related to post-conviction release.

The Board must also provide free electronic recordings of the hearing to the victim upon request.

<sup>8</sup> A.R.S. §13-4414.



## Board membership and staffing

Statute requires the Board to consist of 5 members, all of whom are appointed by the Governor for 5-year terms as full-time employees.<sup>9,10,11</sup> Each member appointed must meet broad professional or educational qualifications and experience, have demonstrated an interest in the State's correctional program, and not be of the same professional discipline as other members of the Board at the same time (e.g., no more than 2 former police officers may serve at the same time). As of June 2024, 4 of the 5 Board positions were filled.

As of June 2024, the Board had 11.5 funded, full-time equivalent (FTE) positions, including Board members, of which 1 was vacant.<sup>12</sup> The Board employs an Executive Director, who is responsible for the administrative, operational, and financial functions of the Board.<sup>13</sup> Additionally, the Board employs a hearing officer, business operations manager, administrative service officer, executive staff assistant, boardroom clerk, and a customer service representative.

## Revenues and expenditures

The Board receives a majority of its revenues from a State General Fund appropriation and since 2015 has received annual grant funding from the Victims' Rights Program.<sup>14</sup> For fiscal year 2023, the Board received \$24,500 to fund the position of Victim Notification Coordinator, a role that involves alerting registered victims about upcoming hearings, their participation rights, and hearing outcomes.

As shown in Table 1 (page 7), the Board's revenues were more than \$1.3 million in fiscal year 2023 and are estimated to be approximately \$1.3 million in fiscal year 2024. The Board's expenditures mainly consisted of personnel costs, building rent, and other operating expenses, and increased by \$201,460 from fiscal year 2021 to its 2024 expense estimate. This increase in costs is associated with the Board moving to a new office location, such as moving costs, increased rent, and increased security costs as a result of increased contracting rates.

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<sup>9</sup> A.R.S. §31-401.

<sup>10</sup> Between 1966 and 1998, the number of members appointed to the Board changed several times. The most recent change, from 7 to the current 5 members, became effective January 1, 1998.

<sup>11</sup> As of fiscal year 2024, the Board Chair's annual salary was \$100,639 and the other 4 Board members' annual salaries were \$74,188 each.

<sup>12</sup> As of June 2024, the Board had a vacant Board member position.

<sup>13</sup> A.R.S. §31-402(E).

<sup>14</sup> A.R.S. §41-191.06(A) established a Victims' Rights Program in the Arizona Attorney General's Office, which includes disbursing Victims' Rights Fund monies pursuant to A.R.S. §41-191.08. The Victims' Rights Program is funded by a portion of a \$9 penalty imposed on criminal offenses and certain civil violations and collected by the courts, pursuant to A.R.S. §12-116.08.

**TABLE 1. SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES<sup>F</sup>**  
**FISCAL YEARS 2021 THROUGH 2024 (UNAUDITED)**

	2021 (Actual)	2022 (Actual)	2023 (Actual)	2024 (Estimated)
<b>Revenues</b>				
State General Fund appropriations <sup>A</sup>	\$1,072,345	\$1,152,119	\$1,288,486	\$1,275,905
Other non-appropriated funds <sup>B</sup>	30,100	23,422	24,500	28,000
<i>Total revenues</i>	<i>1,102,445</i>	<i>1,175,541</i>	<i>1,312,986</i>	<i>1,303,905</i>
<b>Expenditures</b>				
Payroll and related benefits	\$813,849	\$855,525	\$955,420	\$909,977
Other non-appropriated expenditures <sup>B</sup>	36,262	23,550	24,504	20,427
Professional and outside services	9,010	5,670	1,810	8,348
Building rent <sup>C</sup>	117,700	117,700	112,575	150,100
Other operating <sup>D</sup>	131,786	172,063	213,640	205,990
Travel	0	1,161	5,041	1,490
Adjustment <sup>E</sup>	(3,389)	3,389	0	0
<i>Total expenditures</i>	<i>1,105,218</i>	<i>1,179,058</i>	<i>1,312,990</i>	<i>1,296,332</i>
Excess of revenues over (under) expenditures	(2,773)	(3,517)	(4)	7,573
<b>Fund balances, beginning of year<sup>F</sup></b>	<b>6,295</b>	<b>3,521</b>	<b>4</b>	<b>0</b>
<b>Fund balances, end of year<sup>F</sup></b>	<b>\$3,521</b>	<b>\$4</b>	<b>\$0</b>	<b>\$7,573</b>

Source: Audit staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2021 through 2024, as of June 2024.

Notes:

- <sup>A</sup> State General Fund appropriations reflect the Board's annual expenditures of appropriated State General Fund monies.
- <sup>B</sup> Other non-appropriated funds and expenditures consist of the Victim's Rights Program grant funding and expenditures to fund the Victim Notification Coordinator position. The Victim Rights Program is managed by the Arizona Attorney General's Office in accordance with A.R.S. §41-191.06(A) and A.R.S. §41-191.08.
- <sup>C</sup> From fiscal year 2023 to fiscal year 2024, the building rent for the Board increased by \$37,525 due to the Board's previous office location being demolished and the Board moving to a new office building.
- <sup>D</sup> Other operating expenditures include postage and delivery charges, book subscriptions and publications, education and training costs, office supplies, software licenses, professional association dues, security services, and telecommunication charges. These costs increased 56 percent between fiscal year 2021 and its 2024 estimates due to moving costs associated with the Board moving to a new office location, costs associated with retrofitting the office, and increases in the cost of security services as a result of increased contracting rates.
- <sup>E</sup> In fiscal year 2022, the Board made an adjusting entry to its prior year expenditures from the Victims' Rights Program grant funding for fiscal year 2021 due to a payroll overage discovered after fiscal year end. According to the State of Arizona Accounting Manual, an adjusting entry is an entry made to correct a former error.
- <sup>F</sup> In fiscal years 2021 through 2024, the Board's fund balance consisted of unspent grant monies received from the Victim's Rights Program.

# Finding 1. Board did not comply with some State conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

## Statute addresses conflicts of interest for public agency employees and public officers

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a “substantial interest” in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency.

If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer.<sup>15,16</sup> The interest must be disclosed in the public agency’s official records, either through a signed document or the agency’s official minutes. To help ensure compliance with these statutory requirements, the Arizona Department of Administration’s (ADOA) State Personnel System Employee Handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” In addition, A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

In response to conflict-of-interest noncompliance and violations investigated in the course of the Arizona Auditor General’s work, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, the Auditor General has recommended several practices and actions to various school districts, State agencies, and other public entities.<sup>17</sup> The Auditor General’s

### Key terms

- **Substantial interest**—Any direct or indirect monetary or ownership interest that is not hypothetical and is not defined in statute as a “remote interest.”
- **Remote interest**—Any of several specific categories of interest defined in statute that are exempt from the conflict-of-interest requirements. For example, an employee or public officer who is reimbursed for actual and necessary expenses incurred while performing official duties.

Source: Auditor staff review of A.R.S. §38-502 and the *Arizona Agency Handbook*. *Arizona agency handbook*. Phoenix, AZ. Retrieved 2/28/2024 from <https://www.azag.gov/outreach/publications/agency-handbook>.

<sup>15</sup> See A.R.S. §§38-502 and 38-503(A) and (B).

<sup>16</sup> A.R.S. §38-502(8) defines “public officer” as all elected or appointed officers of a public agency established by charter, ordinance, resolution, State constitution, or statute. According to the *Arizona Agency Handbook*, public officers include directors of State agencies and members of State boards, commissions, and committees—whether paid or unpaid.

<sup>17</sup> See, for example, Auditor General Reports 21-402 *Higley Unified School District—Criminal Indictment—Conspiracy, Procurement Fraud, Fraudulent Schemes, Misuse of Public Monies, False Return, and Conflict of Interest*, 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*, and 17-405 *Pine-Strawberry Water Improvement District—Theft and misuse of public monies*.

recommendations are based on recommended practices for managing conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State's conflict-of-interest laws.<sup>18</sup> Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually. Recommended practices also indicate that the form include a field for the individual to provide an "affirmative no," if applicable.<sup>19</sup> These recommended practices also indicate that agencies develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

### **Board did not comply with some State conflict-of-interest requirements and its conflict-of-interest process was not fully aligned with recommended practices**

The Board did not comply with some State conflict-of-interest requirements, and its conflict-of-interest process was not fully aligned with recommended practices designed to help ensure that employees/public officers comply with State requirements. Specifically:

- **Board's conflict-of-interest policy did not comply with State conflict-of-interest requirements—** The Board's conflict-of-interest policy did not require Board members to refrain from participating in any manner as an officer or employee in a decision in which they have a substantial interest. Instead, the Board's policy contradicted this requirement by stating that Board members with a conflict may not participate in a vote but may serve as a resource to other decision-makers. In addition, the Board's policy did not clearly distinguish between statutorily-defined "substantial interests" and other types of potential interests or biases, granting Board members more discretion in deciding when to refrain from participation in decisions than State requirements allow. Although we did not identify any instances in which Board members participated in decisions for which they had disclosed a substantial interest, absent a policy requirement that they refrain from such decisions, Board members were at risk of violating State conflict-of-interest laws.
- **Board did not ensure all Board members and employees completed a disclosure form upon appointment/hire or when circumstances changed, as required by ADOA—**As of February 2024, the Board had not retained copies of Board member and employee ADOA disclosure forms and had to request these forms from ADOA. After auditors requested the ADOA disclosure forms, the Board found that 1 of 5 Board members and 1 of 9 employees had not completed an ADOA disclosure form as of February 2024. Additionally, 2 of the 9 employees did not complete a new ADOA disclosure form when they transferred to the Board from another State agency. Because each State agency has distinct responsibilities, functions, and areas of regulation or involvement, completing a new ADOA disclosure form specific to the employee's new role is important to help ensure any potential or actual conflicts are

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<sup>18</sup> Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2024). *Recommendation of the council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 3/8/2024 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 3/8/2024 from <https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf>; and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 6/24/2024 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

<sup>19</sup> As previously discussed, the ADOA disclosure includes a field for the individual to provide an "affirmative no."

disclosed. As of July 2024, all Board members and employees had a completed or updated ADOA disclosure form on file.

- **Board used a disclosure form that did not address all statutorily required disclosures**—The ADOA disclosure form Board employees completed during new employee onboarding prior to June 2020 required employees to disclose any substantial financial interest; however, it did not require disclosure of substantial interest in Board decisions, as required by statute.<sup>20</sup> In June 2020, the ADOA updated its disclosure form to include decision-making disclosures and to require an affirmative statement indicating whether or not a conflict exists. During the audit, the Board required all Board members and employees to complete an updated ADOA disclosure form. As of July 2024, all Board members and employees had a completed or updated ADOA disclosure form on file.
- **Board lacked a special disclosure file as required by statute**—The Board did not have a special disclosure file to store disclosures of substantial interest for public inspection, as required by statute.<sup>21</sup>

Finally, although not required by statute or ADOA, the Board had not fully aligned its conflict-of-interest process with recommended practices, as follows:

- The Board did not require its employees to annually complete an ADOA disclosure form or annually remind its employees to update their ADOA disclosure form when their circumstances changed. Similarly, it did not require Board members, who are public officers, to complete an ADOA disclosure form when appointed or annually remind them to update their ADOA disclosure form when their circumstances changed.
- The Board had not developed and implemented a remediation process for disclosed conflicts or periodic training for Board members and employees related to their unique programs, functions, or responsibilities.

### **The Board's noncompliance with State- and Board-specific conflict-of-interest requirements increased risk that Board members and employees did not disclose substantial interests that might influence or affect their official conduct**

The Board's noncompliance with State- and Board-specific conflict-of-interest requirements increased the risk that Board members and employees did not disclose substantial interests that might influence or affect their official conduct, and not fully aligning its conflict-of-interest process with recommended practices increased Board members' risk of violating State conflict-of-interest laws. For example, by not requiring Board members/employees to complete an ADOA disclosure form that addressed all statutorily required disclosures upon appointment/hire, or by not reminding them to update their form at least annually or as their circumstances changed, the Board could not ensure that all Board members and employees disclosed both financial and decision-making substantial interests and refrained from participating in any manner related to these interests, as required by statute.<sup>22</sup> Consequently, the Board might have been unaware of potential conflicts and the need to take action to mitigate those conflicts.

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<sup>20</sup> A.R.S. §38-503.

<sup>21</sup> A.R.S. §38-509.

<sup>22</sup> A.R.S. §38-503.

Finally, because the Board did not store completed forms disclosing substantial interests in a special file or have a listing of employees who completed disclosure forms, it lacked a method to track which and how many Board members/employees disclosed an interest and make this information available in response to public requests, as required by statute.

### **Board lacked comprehensive conflict-of-interest policies and oversight of its procedures**

Several factors contributed to the problems noted previously. Specifically:

- The Board indicated that it believed that ADOA handled conflict-of-interest disclosures for State employees, including Board members, and that it was not the Board's responsibility to do so, despite the Auditor General's 2014 Performance Audit and Sunset Review of the Board having a similar finding, including making 5 recommendations to strengthen the Board's efforts to help ensure that its Board members were free from conflicts of interest.<sup>23</sup> The Board agreed to the finding and agreed to implement all 5 recommendations and, as of the 42-month follow-up report in March 2018, the Board had implemented 4 recommendations and substantially implemented 1 recommendation.<sup>24</sup> However, the Board did not sustain these improvements, such as failing to periodically revise its conflict-of-interest policies.
- Prior to our review, the Board had not developed some internal conflict-of-interest policies and procedures. For example, the Board had not developed policies or procedures requiring employees or its members to complete an ADOA disclosure form upon hire/appointment; requiring all disclosures of substantial interests to be stored in a special file for public inspection; or establishing a process for remediating conflicts of interest disclosed by its employees. The Board attributed the failure of 1 Board member and 1 employee to complete an ADOA disclosure form to an oversight; however, the Board's lack of comprehensive conflict-of-interest policies and procedures likely contributed to the issues identified.

As of July 2024, the Board was revising its conflict-of-interest policies and procedures and estimated it will finalize the revised policies by fall 2024.

### **Recommendations**

The Board should:

1. Continue to revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:
  - a. Requiring Board members and employees to complete an ADOA disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change, consistent with recommended practices.

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<sup>23</sup> Arizona Auditor General report 14-105 *Arizona Board of Executive Clemency*.

<sup>24</sup> Arizona Auditor General 42-month followup to report 14-105 *Arizona Board of Executive Clemency*.

- b. Implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.
- c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.
- d. Establishing a process to review and remediate disclosed conflicts.
- e. Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

**Board response:** As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

## Sunset Factors

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Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of the agency. The sunset factor analysis includes additional findings and recommendations not discussed earlier in the report.

### **Sunset factor 1: The key statutory objectives and purposes in establishing the Board.**

Laws 1993, 1st Regular Session, Chapter 255, §3, established the Board, transferring responsibilities previously assigned to the Board of Pardons and Paroles to the Board. As reported in the Introduction (see pages 3 through 7), the Board's key statutory responsibilities include:

- Considering and recommending reprieves, commutations, paroles, and pardons for individuals who committed felony offenses.
- Reviewing community supervision and parole violations and determining whether an individual who has been rearrested should remain in the community.
- Providing victims with notices of hearings where the Board is considering a post-conviction release and the results of those hearings.

### **Sunset factor 2: The Board's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.**

The Board met some requirements related to its statutory objectives and purposes in 1 area we reviewed. Specifically, beginning in May 2018, the Board faced a backlog of 120 outstanding Phase 1 commutation hearings. To address this issue, the Board implemented a goal in January 2019 to conduct 27 hearings per month until the backlog was eliminated. By the end of fiscal year 2020, according to Board reports, it had successfully cleared the backlog. Further, as of June 2023, according to Board reports, the Board did not have a backlog of Phase 1 commutation hearings.

We also identified deficiencies in the Board's processes related to fulfilling its statutory objectives and purposes in 4 areas. Specifically, the Board:

- **Did not consistently track whether it sent required notifications to victims within statutorily required time frames, but for those cases it tracked, sent victim notifications within required time frames in most instances**—The Board is statutorily required to send written notices to victims who have elected to receive notification of (1) an inmate's possible release at least 15 days before the hearing and (2) the hearing results within 15 days after the hearing. According to statute, failure to notify victims at least 15 days before a hearing can result in the hearing decision being invalidated and require the hearing to be repeated in order to afford the victim their right to be present and heard at the hearing.<sup>25</sup>

To help ensure compliance with these requirements, the Board developed a victim notification log to track when victim notifications were sent. Our review of the Board's victim notification tracking log and

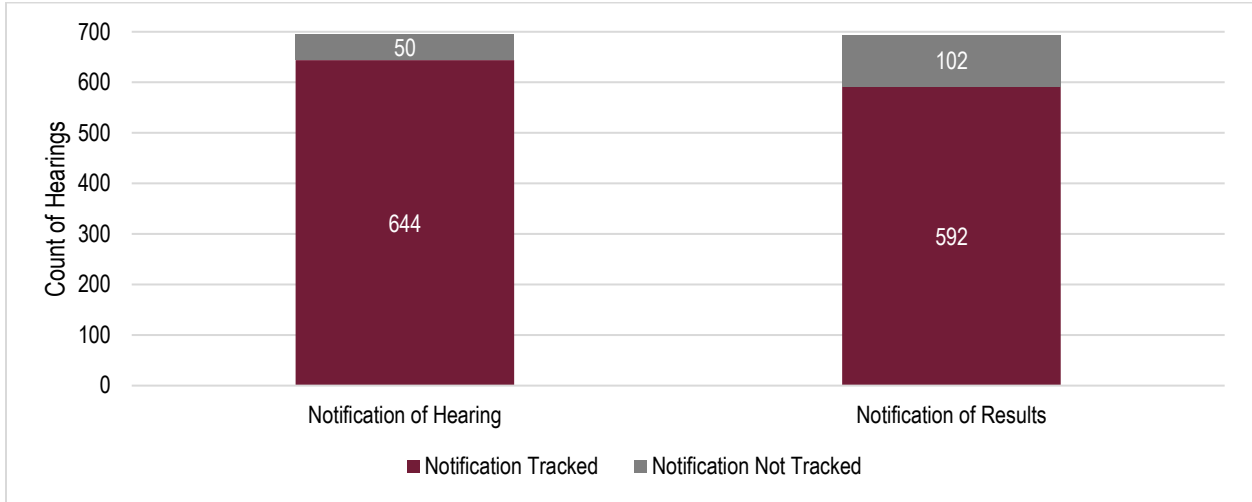
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<sup>25</sup> A.R.S. §13-4436(D).



notification records found that it did not consistently track whether it sent required notifications to victims for 694 hearings related to post-conviction release between January 2023 and March 2024. Specifically, Board staff did not consistently utilize its victim notification tracking log to track when victim notifications were sent and, if a notice was not sent, the reason why (see Exhibit 2 for the number of cases the Board did not track).

**EXHIBIT 2. COMPLETENESS OF THE BOARD’S VICTIM NOTIFICATION TRACKING BETWEEN JANUARY 2021 AND MARCH 2024**



Source: Auditor-generated based on auditor analysis of monthly victim notification log maintained by the Board for January 2021 through March 2024.

By not consistently tracking whether victim notifications are required to be sent, the Board increases the risk of not sending notifications timely or at all, as the tracking log would allow Board management to identify and mitigate risks to the Board’s compliance with victim notification requirements. According to the Board, during the time frame we reviewed, Board management was not reviewing the log due to prioritizing other Board matters, such as revocation and commutation hearings.

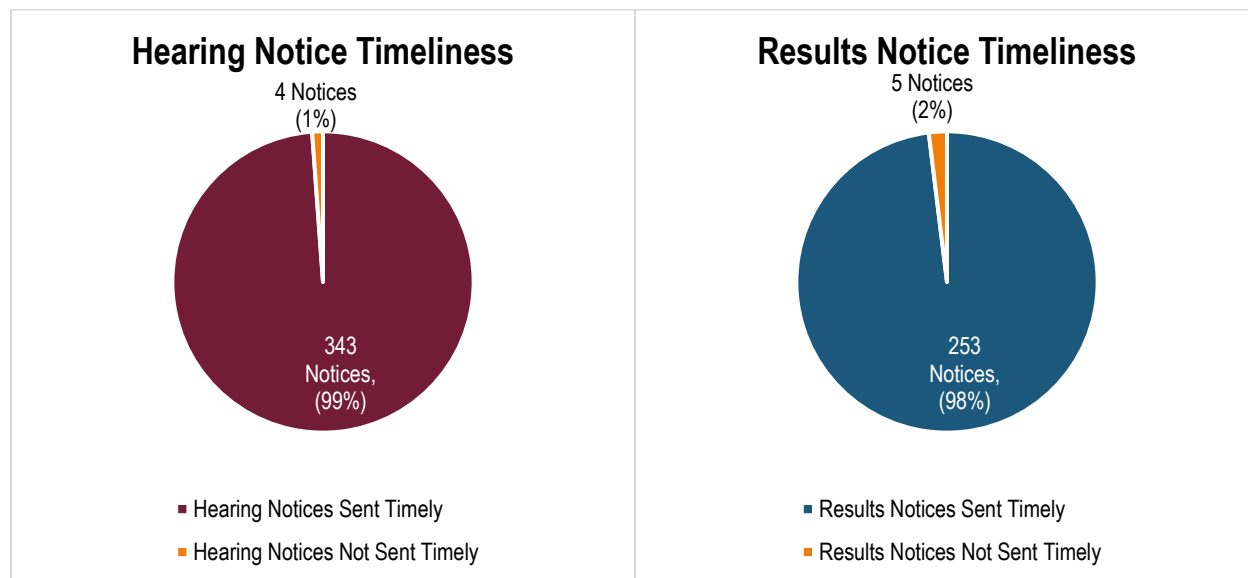
To identify the potential impact of the Board not tracking victim notifications, we further analyzed a judgmental sample of 15 hearings for which the Board did not track whether a victim notification was sent.<sup>26</sup> Our review of information in ADCRR’s inmate data system and documentation provided by the Board determined that the Board appropriately sent notices to victims for 7 hearings for which the victim elected to receive notification, and for the remaining 8 hearings, either no victims elected to receive notification or a previous notification was returned.<sup>27</sup>

<sup>26</sup> Of the sample of 15 hearings, the Board did not track 5 hearing notifications and 10 results notifications.

<sup>27</sup> A.R.S. §13-4417(A) specifies that if a victim wishes to be notified then the victim is responsible for keeping a current telephone number and address on file with the agency responsible for providing victim notification.

Finally, for the victim notifications that the Board did track, the Board sent all but 4 of 347 required hearing notifications at least 15 days before the hearing and all but 5 of 258 required results notifications within 15 days (see Exhibit 3).<sup>28,29</sup>

**EXHIBIT 3. TIMELINESS OF VICTIM NOTIFICATIONS SENT BY THE BOARD FROM JANUARY 2021 TO MARCH 2024**



Source: Auditor-generated based on auditor analysis of monthly victim notification log maintained by the Board for January 2021 through March 2024.

- Did not schedule approximately one-third of revocation hearings within 60 days of parolees' arrests, and can improve its timeliness for scheduling probable cause hearings**—Federal case law indicates that the Board should schedule revocation hearings within a reasonable time frame, and indicates that holding a hearing within 60 days of an inmate's arrest and return to custody is not unreasonable (see Introduction, pages 4 through 5, for more information on revocation hearings).<sup>30</sup> Consistent with case law, the Board has developed a policy to, if possible, hold a revocation hearing within 60 days of an inmate's arrest and return to custody. Our review of 933 revocation hearings for warrants the Board received during fiscal year 2023 found the Board did not hold 310 hearings (or 33 percent) within 60 days of the inmate's arrest, with durations ranging from 61 to 166 days.<sup>31</sup>

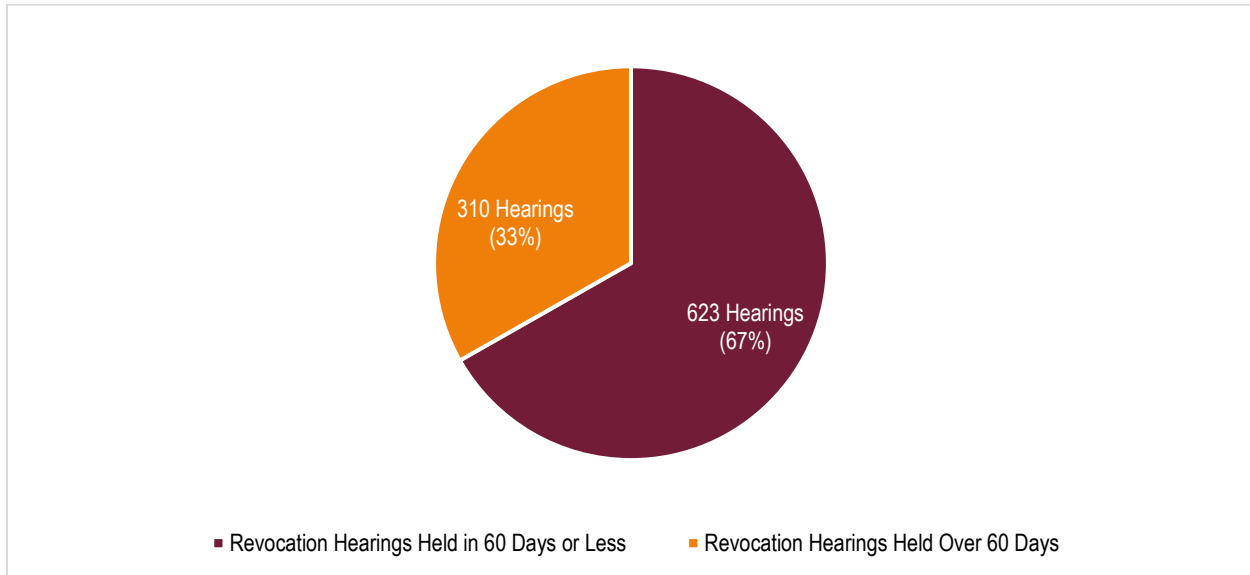
<sup>28</sup> In these 4 instances, notices were mailed to victims between 7 and 14 days before the scheduled hearings. None of the 4 untimely notifications resulted in a victim requesting a rehearing.

<sup>29</sup> In these 5 instances, notices were mailed to victims between 16 and 23 days after the hearings.

<sup>30</sup> Case law, including *Morrissey v. Brewer* (1972) and *Application of Nicholson* (1977), mandates that revocation hearings should be held within a reasonable time and indicates that holding a revocation hearing within 60 days of an inmate's arrest and return to custody is not unreasonable. As a result, scheduling a revocation hearing within this time frame helps ensure due process is maintained, prevents improper incarceration and provides a timely opportunity for the inmate to respond to allegations.

<sup>31</sup> In fiscal year 2023, the Board received warrants of arrest for 927 people, resulting in 933 revocation hearings. For some inmates, multiple revocation hearings may be held due to factors such as new charges added and/or the Board needing additional time to consider cases.

**EXHIBIT 4. TIMELINESS OF REVOCATION HEARINGS HELD FOR NOTIFICATIONS OF INMATE ARREST AND RETURN TO CUSTODY RECEIVED DURING FISCAL YEAR 2023**



Source: Auditor generated from the Board's revocation hearing tracking records.

By not holding revocation hearings within 60 days, the State is at risk for being sued by inmates for due process violations. In addition, delays holding hearings can increase State costs because inmates who may eventually be released must be held longer in prison while awaiting a hearing.

The Auditor General's 2014 audit of the Board similarly found that the Board did not hold more than one-third of revocation hearings within 60 days. The report identified various causes of untimely revocation hearings, including the Board's lack of management reports to track whether it was holding revocation hearings within 60 days and ADCRR taking an average of 22 days to notify the Board of the need to hold a revocation hearing.<sup>32</sup> The report recommended that the Board work with ADCRR to develop management reports within ADCRR's inmate management system and to take steps to improve the timeliness of revocation hearings.

However, the Board did not sustain its efforts to implement the Auditor General's recommendations, which likely contributed to it continuing to hold revocation hearing beyond its 60-day goal. Specifically, as of the Auditor General's 42-month follow-up report in March 2018, ADCRR was in the process of implementing a new inmate management system and the Board was working with ADCRR to develop management reports within the new system and to obtain electronic notification of the need to schedule revocation hearings.<sup>33</sup> However, at the start of this audit in December 2023, the Board did not have management reports, either within ADCRR's inmate management system or within its own data systems, to track whether it is holding revocation hearings within 60 days of an inmate's arrest and return to custody. Without a process to track this information, the Board lacks the ability to

<sup>32</sup> Arizona Auditor General report 14-105 *Arizona Board of Executive Clemency*.

<sup>33</sup> Arizona Auditor General 42-month followup to report 14-105 *Arizona Board of Executive Clemency*.

systematically and proactively take steps to help ensure it holds hearings within its 60-day goal, such as by identifying inmates who are at risk of having a revocation hearing beyond its 60-day goal and to prioritize scheduling these inmate's hearings. Further, as of August 2024, the Board was still receiving paper copies of inmates' arrest warrants from ADCRR, but reported that it was working with ADCRR to start receiving electronic copies of the inmates' arrest warrants.

Finally, the Board cannot hold a revocation hearing until it receives an inmate's arrest warrant from ADCRR and as a result a delay in getting the warrant from ADCRR can potentially impact the Board's ability to hold a revocation hearing within 60 days. However, the Board has not established consistent communications with ADCRR to discuss and establish formal expectations and/or goals for receiving arrest warrants, such as through a memorandum of understanding or an intergovernmental agreement, and we observed that ADCRR's provision of warrants to the Board ranged anywhere from the day of the arrest to more than 60 days after arrest. In August 2024, the Board reported that it had started tracking the date inmates are returned to ADCRR's custody and that it will be able to analyze the length of time that elapses between return to custody and the receipt of arrest warrants from ADCRR.

- **Has not adopted a structured decision-making process for making parole and revocation decisions, despite prior recommendations it do so**—In the Board's 2014 Performance Audit and Sunset Review, the Auditor General found that the Board's process for making parole and revocation decisions was not formalized.<sup>34</sup> According to the 2014 report, without a structured process to help guide its decisions, the Board's decisions may not be as accurate as possible, and thus may not be protecting public safety in the most effective manner. For example, a structured decision-making model would use an evidence-based risk-assessment tool to help determine whether an offender is likely to recidivate and thus more accurately predict positive or negative outcomes than decisions made using an unstructured process. The Auditor General recommended that the Board continue working to develop and implement a structured decision-making model appropriate for use in Arizona to help ensure transparency, consistency, and accuracy in its decision-making.

However, despite taking some steps to implement this recommendation, as of December 2023 at the beginning of this audit, the Board still had not adopted a structured decision-making process. Specifically:

- As of the Auditor General's 42-month follow-up report in March 2018 on the Board's implementation of audit recommendations, the Board reported that it had been participating in a National Institute of Corrections (NIC) pilot program intended to help the Board develop and implement an Arizona-specific structured decision-making framework.<sup>35,36</sup>

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<sup>34</sup> Arizona Auditor General report 14-105 *Arizona Board of Executive Clemency*.

<sup>35</sup> NIC is the only federal agency with a legislative mandate to provide specialized services to corrections from a national perspective. According to NIC, as part of this mandate, it works with state, local, and federal entities to provide informational and consultative services meant to advance the effective management of corrections programs and facilities, enhance organizational and professional performance in corrections, promote safety for all stakeholders involved in corrections, and enhance correctional services.

<sup>36</sup> Arizona Auditor General 42-month followup to report 14-105 *Arizona Board of Executive Clemency*.

- In August 2018, the NIC’s assessment of the Board's readiness to adopt a structured decision-making process found that first the Board would need to:
  1. Strategically plan for collaboration and information sharing with the ADCRR and adopt the use of evidence-based practices.
  2. Undergo training on the use of empirically-based objective risk-assessment tools for release decision making and receive training in the particular risk-assessment tool(s) used by ADCRR institutional staff during an inmate's incarceration.
  3. Appoint an Executive Director who provides leadership and possesses knowledge of best practices relative to parole decision-making and building organizational capacity.
  4. Acquire additional professional and administrative staff.

According to the Board, because it has not obtained the additional staffing the National Institute of Corrections assessment recommended to adopt a structured decision-making process, it has not adopted such a process.<sup>37</sup> However, the Board has not requested staff resources to support administering a structured decision-making model and has not implemented the other NIC recommendations that do not require additional staffing, such as undergoing training on the use of empirically-based objective risk-assessment tools for release decision making. In the Board’s fiscal year 2021 budget submission in August 2021, as part of the Board’s agency 5-year plan, the Board reported it would prefer a less rigid, more flexible model, and that it would research avenues other than structured decision-making to assist Board members in reaching consistent and just decisions. In subsequent budget submissions, the Board has not discussed, nor requested, staffing resources to administer a structured decision-making model.

- **Does not track and assess the outcomes of its commutation recommendations**—As reported in the Introduction (see page 4), between fiscal year 2021 and fiscal year 2023, the Board made 17 recommendations for commutation to the Governor (see textbox).<sup>38</sup> However, although ADCRR tracks whether inmates commit new offenses that result in

**Commutation recommendations between fiscal year 2021 and 2023**

- Former Governor Ducey (15 commutation recommendations)
  - Approved - 8
  - Denied - 3
  - Did not decide - 4<sup>1</sup>
- Governor Hobbs (2 commutation recommendations)
  - Approved - 1
  - Has not yet decided - 1

<sup>1</sup> Of the 4 recommendations the Board made to former Governor Ducey that were not decided upon, 2 were unanimous recommendations by the Board that resulted in the commutations being automatically granted after 90 days. The other 2 recommendations that were not decided upon led to no action, as the inmates died in custody.

Source: Auditor analysis of Board provided information.

<sup>37</sup> In fiscal year 2018, the Board had 14.5 FTEs, of which 9.5 were staff positions, and in fiscal year 2024, the Board continued to have 9.5 staff FTEs.

<sup>38</sup> According to A.R.S. §31-402(D), any recommendation for commutation that is made unanimously by the members present and voting and that is not acted on by the Governor within 90 days after the board submits its recommendation to the Governor automatically becomes effective. According to Board policy, any recommendation for commutation that is not unanimous, but made by a majority of the Board members present shall be sent to the Governor for consideration. There is no time limit for the approval or rejection of such a recommendation.

reincarceration with ADCRR after release, the Board does not track this information for inmates whose sentences are commuted by the Governor. Without this information, the Board cannot assess the impact and usefulness of, and potentially improve, its commutation recommendations.

## Recommendations

The Board should:

2. Consistently track victim notification requirements for hearings, including whether notices have been sent, and adopt oversight procedures to ensure notices are tracked correctly and sent timely.
3. Hold revocation hearings within 60 days of an inmate's arrest and return to custody.
4. Develop and implement a process for tracking its compliance with the 60-day time frame for holding revocation hearings after an inmate's arrest and return to custody.
5. Develop and implement a process for identifying those cases where the revocation hearing is at risk of being held after the 60-day time frame and prioritize holding these revocation hearings.
6. Obtain inmates' warrants electronically from ADCRR.
7. Establish consistent communication with ADCRR to notify ADCRR of any delays in receiving inmates' warrants and to discuss and establish expectations and/or goals for ADCRR's timely delivery of warrants to the Board. The Board should document any agreed upon expectations and/or goals that result from these communications, including considering the need for entering into a written agreement, such as a memorandum of understanding or an intergovernmental agreement, with ADCRR that establishes formal time frame expectations and/or goals for receiving inmates' warrants.
8. Develop and implement a structured decision-making model appropriate for use in Arizona to assist Board members in reaching consistent and accurate decisions.
9. In coordination with ADCRR, develop and implement a process for tracking whether any inmate whose sentence was commuted by the Governor ever reoffends and is incarcerated with ADCRR to help assess the impact and usefulness of and improve its commutation recommendations.

**Board Response:** As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

### **Sunset factor 3: The extent to which the Board's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.**

We did not identify any other government agencies or private enterprises with objectives and purposes that duplicate the Board's key statutory objective and purposes. For example, although ADCRR is responsible for certifying inmates' eligibility for clemency and non-clemency matters, the Board is solely responsible for deciding on non-clemency matters and recommending clemency actions to the Governor.

### **Sunset factor 4: The extent to which rules adopted by the Board are consistent with the legislative mandate.**

According to A.R.S. §41-1005(A)(7), the Board is exempt from the statutorily required rule-making process, but A.R.S. §31-401(G) authorizes the Board to promulgate rules. The Board's legislative mandate is to

handle clemency and non-clemency hearings and our review of its rules did not identify any rules that are inconsistent with this mandate. According to the Board, it has established the rules it deems necessary to meet its legislative mandate.

**Sunset factor 5: The extent to which the Board has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.**

*Public Records Requests*

The Board adopted policies outlining the Board’s processes for handling public records requests, which include defining confidential records; specifying that public records requests will be completed within 10 working days, except in the case of large volume requests; and processing and redaction procedures.<sup>39</sup> To track open requests, the Board has implemented a tracking log to track request timelines, the nature of requests, and personnel fulfilling requests. Between January 2021 and December 2023, the Board received 448 public records requests.

However, the Board did not comply with some of its public records policies and State public records requirements. Specifically:

- **Responses to public records requests were not always timely**—We found that the Board did not always process public records requests within 10 working days, as specified in the Board’s policies, in calendar years 2021, 2022, and 2023. Exhibit 5 shows how many requests were tracked in total each year, and the number and percent of requests that were tracked as completed within 10 working days.

**EXHIBIT 5. PUBLIC RECORDS REQUESTS TRACKED PER YEAR**

Calendar Year	Total requests tracked	Number of requests completed within 10 working days <sup>A</sup>	Percent of requests completed within 10 working days <sup>A</sup>
2021	73	24	33%
2022	194	136	70%
2023	181	125	69%

Source: Auditor generated from review of the Board’s public records tracking logs, 2021-2023.

<sup>A</sup> There were 4-6 tracking log entries in each year that had an unknown date of completion. These were included in the total requests tracked, but not counted as completed in 10 working days.

We conducted further review of a judgmental sample of 12 public records requests from the total of 181 requests submitted during calendar year 2023, to assess compliance with statutory requirements and Board policy. For 6 of the 12 requests sampled, the Board did not adhere to the time frame established in its policy, with these 6 sampled requests fulfilled between 11 and 52 days after the request was received. Although Board policy allows for extensions when large volumes of information are requested, that was not the case for the 6 requests reviewed. Additionally, for 5 of the 6 requests the

<sup>39</sup> The Board’s Public Records Request Policy, Board Policy #116, Section 2.3.1 states: “Requests for large volumes of information that may exceed the designated time frame will be notified in writing that the request is extensive and be provided an estimated completion date.”

Board did not notify the requestor that the request would be delayed, nor did the Board provide a timeline for providing the requested documents. For 1 request, the Board notified the requestor that the requested information would need to be retrieved from archives and would be delayed; however, the Board did not provide an estimated delivery date. Fulfilling public records requests in a reasonably prompt and efficient manner contributes to transparency and accountability in government activities, both of which are diminished when these requirements are not followed.

According to the Board, the 10 working day requirement established in its policy is no longer feasible due to (1) an increase in the number of requests received in recent years, with total requests increasing from 73 requests in calendar year 2021 to 181 requests in calendar year 2023—an increase of 108 requests (148 percent); and (2) staffing resources allotted to fulfilling records requests have not changed despite the increase in workload. The Board reported that it plans to revise its policy in summer 2024.

- **Board did not acknowledge receiving public records requests within 5 business days for 2 of the 12 public record requests reviewed, as required by A.R.S. §39-171(B)**—In 2 of 12 instances we reviewed, the Board took 10 and 16 days to acknowledge receipt of requests. According to the Board, a combination of an increased number of requests and limited resources contributed to the Board not meeting this requirement. Absent a confirmation reply within 5 business days, a requestor may send additional, duplicate requests, subsequently increasing Board staff workload.

### *Public Rulemaking Requirements*

As of June 2024, the Board has not initiated any rulemaking since 2008. Therefore, it has not needed to provide public access to rulemakings or solicit public input since that time.

### *Open Meeting Law*

Statute requires public bodies, including the Board, to hold all meetings as “public meetings.” According to the Attorney General’s Agency Handbook, the intent of open meeting law is to maximize public access to the governmental process. To achieve this, open meeting law includes specific requirements regarding public attendance, notice of meetings, and minutes and records maintained for each meeting.<sup>40</sup>

Our review of 4 meetings the Board held between July 2022 and May 2023, including 1 executive session, 1 business meeting, and 2 meetings for hearings, found that the Board complied with most open meeting law requirements we reviewed.<sup>41</sup> For example, for all 4 meetings, the Board posted public meeting notices and agendas on its website at least 24 hours in advance and conducted executive sessions in accordance with statute.<sup>42</sup> The Board also provided a recording for 3 of 4 meetings sampled within 3 business days that included all statutorily required information. However, the Board did not have available a recording or

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<sup>40</sup> Specifically, open meeting laws require agencies: (1) publish on their website the location where notices will be posted, (2) post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings, (3) give notice at least 24 hours before meetings, (4) take written minutes or a recording of all meetings, and (5) make minutes available for public inspection 3 working days after the meeting.

<sup>41</sup> In fiscal year 2023, the Board held an estimated 197 meetings for hearings and 6 business meetings.

<sup>42</sup> A.R.S. §38-431.01(C)



minutes for 1 meeting in our sample, a business meeting for a Board member training held on May 17, 2023. Board staff stated they were not able to locate the recording and they were not sure why it was not in its expected location. According to the Board, 1 staff member is responsible for uploading recordings, filing them in the main shared drive by date, and labeling each file. However, the Board does not have an oversight process to ensure the recordings were stored in accordance with their policy. The Board reported that it plans to revise its process for maintaining meeting recordings in summer 2024.

**Sunset factor 6: The extent to which the Board timely investigated and resolved complaints that are within its jurisdiction.**

The Board does not have a statutory responsibility to investigate and resolve complaints; however, the Board reported that it does occasionally receive complaints from the public. Complaints submitted by the public are handled by the Board's Executive Director, in consultation with the Board's legal counsel and Office of the Governor. Between fiscal years 2021 and 2023, the Board received 1 public complaint, related to a Board member's private communications prior to becoming a member of the Board. In consultation with the Arizona Attorney General's Office and the Office of the Governor, the Board determined the complaint to be unfounded.

**Sunset factor 7: The extent to which the level of regulation exercised by the Board is appropriate as compared to other states or best practices, or both.**

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

**Sunset factor 8: The extent to which the Board has established safeguards against possible conflicts of interest.**

The State's conflict-of-interest requirements exist to remove or limit the possibility of personal influence from impacting a decision of a public agency employee or public officer. However, the Board did not comply with some State conflict-of-interest requirements and had not fully aligned its conflict-of-interest process with recommended practices, such as requiring all Board members and employees to complete a conflict-of-interest disclosure form upon hire or appointment, reminding all Board members and employees to update their disclosure form at least annually or as their circumstances change, and maintaining a special file for substantial interest disclosures. We recommended that the Board revise and implement policies and procedures consistent with State conflict-of-interest requirements and recommended practices (see Finding 1, pages 8 through 12, for additional information about our recommendations).

**Sunset factor 9: The extent to which changes are necessary for the Board to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.**

We did not identify any instances where the Board's statutory responsibilities should be revised or eliminated.

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

Terminating the Board would jeopardize public safety and welfare if its responsibilities were not transferred to another entity. For instance, the Board's parole and revocation hearings include consideration of several factors that are intended to protect public safety, such as considering the nature of an inmate's original offense, their behavior while on parole, and risk to the community; and deciding whether violators should return to prison or remain in the community. In fiscal year 2023, the Board reviewed 856 parole and revocation cases, sending 786 individuals who committed violations while on parole/community supervision back to prison. Without the Board or a similar entity, there would be no State entity to handle these functions, putting the public at greater risk. Additionally, the Board is responsible for reviewing clemency applications for felony offenses, which the Governor cannot act upon without its recommendation.

## Summary of recommendations

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### Sjoberg Evashenk Consulting makes 9 recommendations to the Board

The Board should:

1. Continue to revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:
  - a. Requiring Board members and employees to complete an ADOA disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change, consistent with recommended practices.
  - b. Implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.
  - c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.
  - d. Establishing a process to review and remediate disclosed conflicts.
  - e. Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.
2. Consistently track victim notification requirements for hearings, including whether notices have been sent, and adopt oversight procedures to ensure notices are tracked correctly and sent timely.
3. Hold revocation hearings within 60 days of an inmate's arrest and return to custody.
4. Develop and implement a process for tracking its compliance with the 60-day time frame for holding revocation hearings after an inmate's arrest and return to custody.
5. Develop and implement a process for identifying those cases where the revocation hearing is at risk of being held after the 60-day time frame and prioritize holding these revocation hearings.
6. Obtain inmates' warrants electronically from ADCRR.
7. Establish consistent communication with ADCRR to notify ADCRR of any delays in receiving inmates' warrants and to discuss and establish expectations and/or goals for ADCRR's timely delivery of warrants to the Board. The Board should document any agreed upon expectations and/or goals that result from these communications, including considering the need for entering into a written agreement, such as a memorandum of understanding or an intergovernmental agreement, with ADCRR that establishes formal time frame expectations and/or goals for receiving inmates' warrants.
8. Develop and implement a structured decision-making model appropriate for use in Arizona to assist Board members in reaching consistent and accurate decisions.

9. In coordination with ADCRR, develop and implement a process for tracking whether any inmate whose sentence was commuted by the Governor ever reoffends and is incarcerated with ADCRR to help assess the impact and usefulness of and improve its commutation recommendations.

## Appendix A. Scope and methodology

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Sjoberg Evashenk Consulting conducted a performance audit and sunset review of the Board on behalf of the Arizona Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

We used various methods to address the audit's objectives. These methods included reviewing applicable State statutes and rules, the Board's policies and procedures, reports, and information from the Board's website; and interviewing Board staff. In addition, we used the following specific methods to meet the audit objectives:

- To assess the Board's compliance with State conflict-of-interest requirements and alignment with statute and recommended practices, we reviewed statute, recommended practices, Board policy, and completed disclosure forms for 9 Board employees and all 5 Board members for fiscal years 2023 and 2024.
- To determine whether the Board's scheduled hearings timely, and to assess the quality of information tracked by the Board concerning timelines associated with these activities, we reviewed the population of 933 revocation hearings held by the Board for warrants received during fiscal year 2023. Additionally, to evaluate whether the Board appropriately sent notifications within statutory timelines, we reviewed the Board's victim notification tracking log and after identifying 9 instances in which the Board did not meet noticing timelines, reviewed all 9 instances. Further, we selected a judgmental sample of 15 hearings for which the Board did not track whether notices were sent to evaluate whether the Board appropriately tracked and issued notices. Finally, we reviewed the Board's scheduling and tracking of commutation hearings during calendar years 2021 through 2023. During the process of conducting these reviews, we reviewed Board records, such as Board tracking logs, ADCRR's inmate data system, Board communications with ADCRR, and paper records of notices.
- To assess the Board's compliance with the State's open meeting law requirements, we reviewed 4 Board Meetings held between July 2022 and May 2023, which included 1 executive session, 1 business meeting, and 2 meetings for hearings.
- To obtain information for the Introduction, we reviewed Board-provided information, such as the Board's website and annual reports, related to staffing and hearings. We also analyzed unaudited information from the AFIS *Accounting Event Transaction File* for fiscal years 2021 through 2024, as of June 2024.

Our work on internal controls included reviewing relevant policies and procedures, statutes, and recommended practices and, where applicable, testing compliance and/or alignments with these requirements and recommended practices. We reported our conclusions on applicable internal controls in Sunset Factors 2 and 8.

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

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

We express our appreciation to the Board's members and staff for their cooperation and assistance throughout the audit.

# Board response

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Katie Hobbs  
GOVERNOR



Mina Mendez  
CHAIRMAN

**ARIZONA**  
**BOARD OF EXECUTIVE CLEMENCY**

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Phoenix, AZ 85012  
OFFICE (602) 542-5656 ~ FAX (602) 542-5680

September 18, 2024

Lindsey Perry, CPA, CFE, Auditor General  
Arizona Auditor General  
2910 North 44th Street, Suite, 410  
Phoenix, Arizona 85018-7271

Re: Arizona Board of Executive Clemency Sunset Review

Dear Ms. Perry,

On behalf of the Arizona Board of Executive Clemency, attached is the response to the Performance Audit and Sunset Review report finding and recommendations.

The audit recommendations are agreed to and the Board is already in the process of implementing a number of them. The Board extends its appreciation to the auditors for their professionalism and the time they spent in gaining an understanding of the Board's processes.

Respectfully,

A handwritten signature in blue ink, appearing to read "Gretchen McClellan-Singh".

Gretchen McClellan-Singh  
Executive Director



**Finding 1:** Board did not comply with some State conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

**Recommendation 1:** The Board should continue to revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

**Recommendation 1a:** Requiring Board members and employees to complete an ADOA disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change, consistent with recommended practices.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has taken necessary steps to revise conflict of interest and hearing recusal policies to comply with requirements and reduce risk that interests may influence official conduct. On August 21, 2024, the Board voted to accept revisions to Board policies #103, Conflict of Interest and #104, Hearing Recusal, effective September 1, 2024. The Board will continue to review all policies and procedures to ensure the agency is in compliance. 1a: The Board has implemented a process to have all Board members and Board staff complete the ADOA approved disclosure form upon hire and on an annual basis in addition to any time there is a change.

**Recommendation 1b:** Implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented a process for all Board members and Board staff complete the ADOA approved disclosure form upon hire and on an annual basis. The Board will also implement the use of an employee file checklist to ensure all required records are included in the Board's personnel files.

**Recommendation 1c:** Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: All substantial interest disclosures (forms and any meeting minutes) will now be kept in a special file and made available for public inspection.

**Recommendation 1d:** Establishing a process to review and remediate disclosed conflicts.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has taken necessary steps to revise conflict of interest and hearing recusal policies to comply with requirements and reduce risk that interests may influence official conduct. On August 21, 2024 the Board voted to accept revisions to Board policies #103, Conflict of Interest and #104, Hearing Recusal, effective September 1, 2024.

Hearing recusals remain very rare. The Board will continue to review all policies and procedures to ensure the agency is in compliance.

**Recommendation 1e:** Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement annual training on conflict of interest requirements, hearing recusal policies and procedures and how State requirements relate to agency business.

**Sunset Factor 2:** The Board's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

**Recommendation 2:** The Board should consistently track victim notification requirements for hearings, including whether notices have been sent, and adopt oversight procedures to ensure notices are tracked correctly and sent timely.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will adopt and implement oversight procedures to ensure that notices are tracked and continue to be sent timely as found during the audit.

**Recommendation 3:** The Board should hold revocation hearings within 60 days of an inmate's arrest and return to custody.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: Upon receipt of the warrant, the Board will continue to schedule probable cause hearings and revocation hearings as timely as possible. The Board will continue to review options to expand the availability of revocation calendar slots, particularly in months where a holiday occurs on a revocation calendar day.

**Recommendation 4:** The Board should develop and implement a process for tracking its compliance with the 60-day time frame for holding revocation hearings after an inmate's arrest and return to custody.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: Upon receipt of the warrant, the Board is tracking the date the individual was returned to custody to identify those cases that are at risk of going beyond 60 days.

**Recommendation 5:** The Board should develop and implement a process for identifying those cases where the revocation hearing is at risk of being held after the 60-day time frame and prioritize holding these revocation hearings.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is tracking the date an individual was returned to custody to prioritize those cases that are at risk of going beyond 60 days. The Board will continue to review options to expand the availability of revocation calendar slots, particularly in months where a holiday occurs on a revocation calendar day.

**Recommendation 6:** The Board should obtain inmates' warrants electronically from ADCRR.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board was notified by representatives from ADCRR that they planned to implement electronic delivery of warrants to the Board in September 2024.

**Recommendation 7:** The Board should establish consistent communication with ADCRR to notify ADCRR of any delays in receiving inmates' warrants and to discuss and establish expectations and/or goals for ADCRR's timely delivery of warrants to the Board. The Board should document any agreed upon expectations and/or goals that result from these communications, including considering the need for entering into a written agreement, such as a memorandum of understanding or an intergovernmental agreement, with ADCRR that establishes formal time frame expectations and/or goals for receiving inmates' warrants.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is now tracking the date individuals are returned to custody and will be able to analyze the average length of time from re-incarceration to the Board's receipt of the warrant. By tracking this data, the Board will be able to engage in more productive communications with ADCRR regarding the timely receipt of warrants and to document agreed upon expectations. If needed, the Board will engage in discussions with ADCRR regarding a memorandum of understanding or an intergovernmental agreement to establish more certain expectations.

**Recommendation 8:** The Board should develop and implement a structured decision-making model appropriate for use in Arizona to assist Board members in reaching consistent and accurate decisions.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: With current limited staff resources the Board is unable to develop and implement a full structured decision-making (SDM) model at this time. However, the Board will seek out training on SDM models and will focus efforts on identifying more flexible models and tools that can be implemented without a significant increase in staffing.

**Recommendation 9:** The Board should, in coordination with ADCRR, develop and implement a process for tracking whether any inmate whose sentence was commuted by the Governor ever reoffends and is incarcerated with ADCRR to help assess the impact and usefulness of and improve its commutation recommendations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented a process for tracking individuals who have obtained a commutation of sentence to determine if they have been re-incarcerated in ADCRR

custody. In reviewing cases of commutation and pardons granted in Arizona since 2015 the Board has found no instance where an individual was incarcerated in ADCRR after their commutation or pardon was granted.