

PAROLE COMMISSION
RESTORATION OF CIVIL RIGHTS

Operational Audit

For the Period July 2007 Through February 2009



CHAIR OF PAROLE COMMISSION

The Parole Commission is established by Article IV, Section 8(c) of the State Constitution and operates under the authority of Sections 20.32 and 947.13, Florida Statutes. The three members of the Commission are appointed by the Governor and Cabinet and confirmed by the Senate. The Commission also serves as an investigative body that supports the Board of Executive Clemency, comprised of the Governor and Cabinet. Members of the Parole Commission who served during the audit period are listed below:

Mr. Frederick B. Dunphy, Chair from 08-12-08
Ms. Monica David, Chair through 08-12-08
Ms. Tena M. Pate, Vice-Chair

The audit team leader was Nick Druash and the audit was supervised by Allen Weiner, CPA. Please address inquiries regarding this report to Nancy Tucker, CPA, Audit Manager, by e-mail at nancytucker@aud.state.fl.us or by telephone at (850) 487-4370.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

PAROLE COMMISSION

Restoration of Civil Rights

SUMMARY

This operational audit of the Parole Commission (Commission) for the period July 2007 through February 2009 focused on Commission actions related to the restoration of civil rights (RCR) and actions taken to address prior audit findings.

Our audit disclosed the following:

Restoration of Civil Rights

EX-OFFENDER INITIATED REQUESTS FOR RCR

Finding No. 1: Ex-offenders convicted of crimes in other states, in Federal courts, and who had not been placed in the custody of the Department of Corrections, must submit requests to initiate the RCR process. Although there is a procedure in place for the receipt of applications from these ex-offenders, 28,428 of the 32,859 (86.5 percent) requests received since January 2006 had not been referred to the Commission’s Office of Clemency Administration for review or investigation.

ELIGIBILITY DETERMINATION PROCEDURES

Finding No. 2: The Commission had not established for RCR eligibility determinations a risk-based supervisory review process or quality control procedures. A risk-based supervisory review process could target cases and eligibility criteria prone to error and assist in the more effective and judicious use of resources. Quality control procedures would also increase assurance that eligibility determinations were made in accordance with Clemency Board Rules.

OVERRIDES OF ELIGIBILITY DETERMINATIONS

Finding No. 3: While having the ability to override a parole examiner’s determination appears to be a necessary role for supervisors, the Management Application of Clemency (MAC) database does not provide the parole examiner or management any notification of a supervisory change to an eligibility determination, nor does it flag the change in the database for later review.

PERFORMANCE MEASURES

Finding No. 4: The Commission’s performance measures did not provide standards and results for each level of review or investigation and for backlog reduction.

Non-Capitalized Property

ACCOUNTABILITY FOR ATTRACTIVE OR SENSITIVE ITEMS

Finding No. 5: To provide accountability and data security, the Commission’s information technology staff maintained a listing of property items, the costs of which did not meet the thresholds for capitalized property but which were considered attractive or sensitive. However, the Commission did not maintain documentation of the physical inventory of these property items as well as any efforts to locate any unaccounted for property.

BACKGROUND

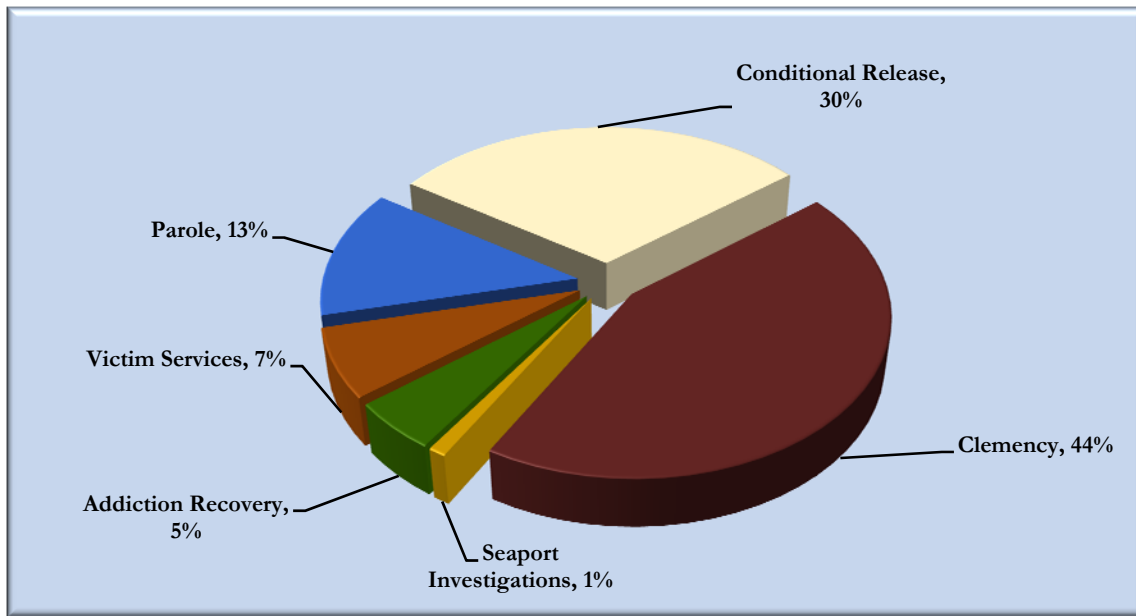
Since its establishment in 1941, the Commission has been responsible for determining those offenders who may be placed on parole (discretionary prison release), fixing the time and conditions of parole, determining whether an offender has violated parole and taking action with respect to any such violation, and making any necessary investigations. Sentencing guidelines enacted in 1983 effectively abolished parole and, currently, only those offenders

sentenced for crimes committed before October 1, 1983, and those sentenced for capital felony murder committed prior to May 25, 1994, or other capital felonies committed prior to October 1, 1995, are eligible for parole.

The Commission is also responsible for the administration of conditional release (mandatory post-prison supervision for offenders of certain violent crimes), conditional medical release (discretionary release for inmates who are terminally ill or permanently incapacitated), control release (release for prison population management), and addiction recovery supervision (mandatory post-prison supervision for certain offenders with a history of substance abuse or addiction). The Commission’s administration of these releases includes establishing the terms and conditions of release, determining whether an offender has violated the conditions of release, and taking action with respect to any such violation.

In addition to its responsibilities related to parole and prison release, the Commission’s Office of Clemency Administration serves as an investigative body that supports the Board of Executive Clemency¹ (Clemency Board). Clemency is a constitutionally authorized process that provides the means through which convicted felons may be considered for relief from punishment (while still incarcerated or under community supervision) or may seek restoration of their civil rights (upon release from incarceration and community supervision). As shown in Chart 1, during the 2007-08 fiscal year, the Commission represented that clemency activities comprised 44 percent of its workload:

**Chart 1
Commission Workload
For the 2007-08 Fiscal Year**



Source: *Florida Parole Commission Annual Report 2007-08*

The Office of Executive Clemency processes applications for executive clemency, coordinates all clemency hearings, and refers applications to the Commission for investigation. The Office reports directly to the Governor and Cabinet in the performance of its duties and responsibilities, but is co-located with the Commission for ease of operation and coordination.

¹ The Board of Executive Clemency consists of the Governor and Cabinet.

For the 2007-08, 2008-09, and 2009-10 fiscal years, the Legislature appropriated \$9.7, \$8.1, and \$8.1 million in general revenue funds, respectively, and authorized 148, 131, and 128 full-time equivalent positions, respectively, for the Commission.

FINDINGS AND RECOMMENDATIONS

Restoration of Civil Rights

Restoration of civil rights (RCR) is the restoration to an ex-offender all of the rights of citizenship in the State of Florida enjoyed before a felony conviction, except the specific authority to own, possess, or use firearms. Such rights include the right to vote, the right to serve on a jury, the right to hold public office, and the right to be considered for certain types of employment licenses. On April 5, 2007, the Clemency Board approved changes to the Rules of Executive Clemency (Rules) that increased the number of ex-offenders eligible for “automatic” RCR. Prior to revising the Rules, only 26 percent of ex-offenders were eligible, based on their crime, to have their civil rights restored without a hearing. After the revision, approximately 80 percent of ex-offenders became eligible.²

In conjunction with the revised Rules, efforts were made by the Commission to identify eligible ex-offenders by examining historical data from the Department of Correction’s Offender Based Information System records. Shortly after the revised rules were announced, the 2007 Legislature authorized a \$50,000 one-time general revenue appropriation to fund RCR outreach efforts. This appropriation allowed the Commission to hold 20 RCR workshops in communities around the State to

clarify the new Rules and to fund the RCR toll-free telephone number. According to the Commission, through these outreach events, thousands of ex-offenders were assisted in obtaining

**Table 1
RCR Cases Received and Processed
for the Past Five Fiscal Years**

RCR Cases	2003-04	2004-05	2005-06	2006-07	2007-08
Received	43,869	45,563	44,571	113,638	133,200
Processed	68,996	40,142	43,856	53,856	151,823

Source: FPC Proviso Response to the Legislature, dated October 1, 2008

their restoration of rights.³ As shown in Table 1, the revised Rules and outreach efforts greatly increased the number of cases received by the Commission. To help address the increased workload brought about by the revised Rules, the Commission augmented its authorized positions by temporarily hiring 78 employees for six months during fiscal year 2007-08.

The Commission is responsible for determining the appropriate RCR eligibility level in accordance with the revised Rules and independently verifying each ex-offender’s eligibility. For RCR Eligibility Levels 2 and 3, the Commission is also responsible for performing mid-level or full investigations, as shown in Table 2.

² Florida Parole Commission Annual Report 2007-2008

³ Florida Parole Commission Annual Report 2007-2008

**Table 2
Restoration of Civil Rights Process**

RCR Eligibility Level	Rule No.	Type of Offense	Eligibility Requirements	Commission and Office Responsibilities/Process	Clemency Board Actions
1	9	Less Severe (e.g., grand theft, burglary of dwelling, felony DUI, sale of controlled substance)	Sentence completed. Supervision completed. Victim restitution paid.	Verify eligibility. Verify no pending charges. No investigation required. Add name to Executive Order for Clemency Board. Issue RCR certificate.	Automatic approval. Governor plus two Board members sign Executive Order without hearing.
2	10A	Severe, except murder and sex offenses (e.g., aggravated battery/assault, trafficking in cocaine, aggravated stalking, kidnapping/false imprisonment, first degree burglary)	Sentence completed. Supervision completed. Victim restitution paid.	Verify eligibility. Verify no pending charges. Conduct mid-level investigation. Add name to Clemency Board preliminary review list with investigation attached. If not approved, conduct full hearing and investigation. If approved, issue RCR certificate.	Sign Executive Order (Governor plus two other Board members) without hearing within 30 days or disapprove.
2	10B	All Offenses	Sentence completed. Supervision completed. Victim restitution paid. 15 years crime and arrest free.	Verify eligibility. Verify no pending charges. Conduct mid-level investigation. Add name to Clemency Board review list with investigation attached. If not approved, conduct full hearing and investigation. If approved, issue RCR certificate.	Sign Executive Order (Governor plus two other Board members) without hearing within 30 days or disapprove.
3	6	Most Serious (e.g., murder/manslaughter, sexual battery, aggravated child abuse, sexual predator designation)	Sentence completed. Supervision completed. Victim restitution paid.	Verify eligibility. Verify no pending charges. Conduct full investigation, including victim statement and Commission recommendation. If approved, issue RCR certificate.	Requires hearing. Sign Executive Order (Governor plus two other Board members) or disapprove.

Source: *Florida Parole Commission Annual Report 2007-2008*; Rules of Executive Clemency

As described in the following findings, our audit disclosed several issues that should be addressed to better administer the RCR function.

Finding No. 1: Ex-Offender Initiated Requests for RCR

The Commission received monthly data files from the Department listing all offenders who were released from incarceration and community supervision. Because the data files were to be electronically uploaded into the Commission’s Management Application of Clemency (MAC) database, ex-offenders leaving the Department’s custody no longer had to initiate requests for RCR. For all such ex-offenders, the Office of Clemency Administration (Clemency Administration) was to determine the RCR eligibility level and perform the necessary verifications and investigations required by the RCR process.

Ex-offenders not included in Department data files (for example, those convicted of crimes in other states, convicted of crimes in Federal courts, or convicted of felonies in Florida but not placed in the custody of the Department) had to submit requests to initiate the RCR process. Ex-offenders could submit requests by telephone, e-mail, mail, or through the Commissions’ Web site. Pursuant to Commission procedures, RCR requests received by telephone, e-mail, mail, or through the Commissions’ Web site, were to be initially handled by the Office of Executive Clemency (Office), pursuant to the Rules of Executive Clemency. Office procedures required that staff manually enter each ex-offender’s RCR request into the MAC database and perform a screening of the ex-offender’s criminal background to

determine the appropriate RCR eligibility level and ascertain whether any restitution was still owed or any charges were pending. After the screening was completed, if it appeared that the ex-offender was eligible for RCR, the record in the MAC database was to be coded “Sent to Clemency Administration for RCR without hearing” or “Sent to Clemency Administration for full investigation,” as applicable.

According to Commission records, 28,428 of the 32,859 (86.5 percent) ex-offender initiated RCR requests received during the period January 1, 2006, through February 1, 2009, had not been sent to Clemency Administration for further processing. Furthermore, as of February 1, 2009, an estimated 3,686 of the 32,859 requests (11.2 percent) received from mid-October 2008 through February 1, 2009, had not been entered into the MAC database.

We were advised that these cases had not been processed because the Department cases (ex-offenders released by the Department of Corrections) had been given a higher processing priority as they required less time to process. While the Commission may have been able to complete more cases by processing the Department cases ahead of the other pending cases, such processing priorities did not allow the Commission to process cases in the order received. Generally, although the Rules of Executive Clemency do not clearly address this matter, it has been the policy of the Commission to process cases following a “first-in, first-out” policy.

Recommendation: We recommend that the Parole Commission, in conjunction with the Office of Executive Clemency, present for the Clemency Board’s consideration rules establishing processing priorities for RCR requests.

Finding No. 2: Eligibility Determination Procedures

During the period July 1, 2007, through February 1, 2009, Clemency Administration processed 199,047 RCR cases. In processing RCR requests, Commission parole examiners are to review various State and Federal online criminal databases to determine whether the ex-offenders have met all the eligibility requirements established in the Rules. For most cases, Commission procedures do not require that a hardcopy of the information observed from the databases supporting eligibility determinations be retained for the case file.⁴ After the review of online criminal databases is completed, the parole examiner is to input eligibility determinations into the MAC database. The determination is to indicate the parole examiner’s basis for disqualification, if applicable, or update the eligibility status and date.

Subsequent to the parole examiner’s determination, a supervisor is to approve the parole examiner’s decision by checking the appropriate field in the MAC database, enabling the case to continue in the RCR process. Commission staff stated that for a limited number of cases, supervisors reperformed parole examiners’ reviews by observing the same State and Federal databases to evaluate whether the correct eligibility determinations were reached. However, the reperformance of these reviews by supervisors was not documented in the MAC database or elsewhere.

Our audit of the case records of 203 ex-offenders granted RCR by Executive Order of the Clemency Board during the audit period indicated that 13 ex-offenders (6 percent) either did not meet the eligibility requirements of the Rules or were evaluated at an inappropriate RCR eligibility level, as shown in Table 3. An error rate of 6 percent indicates that the Commission’s supervisory review processes were not working effectively.

⁴ For RCR Eligibility Levels 2 and 3, investigation case files may include other documentation, such as documentation of the felony conviction, circumstances of the offenses, applicants’ version of offenses, prior arrest records, subsequent arrest records, judicial or State Attorney’s comments, domestic violence information and injunctions, and victims’ statements. Generally, case files are not maintained for Eligibility Level 1 cases.

Table 3
RCR Processing Errors

RCR Eligibility Level Determined by Parole Examiner			Total Errors Noted by Audit	Error Description
Level 1	Level 2	Level 3		
5		1	6	Disqualifying conditions not identified: Victim restitution owed Outstanding warrants Evaluated at inappropriate RCR Eligibility Level: Should have been evaluated at Level 2 - First Degree Burglary Should have been evaluated at Level 2 - Aggravated Battery Should have been evaluated at Level 3 - Sexual Battery
2	1		3	
1			1	
2			2	
1			1	
<u>11</u>	<u>1</u>	<u>1</u>	<u>13</u>	

The Commission is responsible for establishing an effective supervisory review program for RCR to provide reasonable assurance that parole examiners correctly determine eligibility of RCR for all ex-offenders. In lieu of a requirement that all be reviewed, the development of a risk-based RCR supervisory review process that targets the types of ex-offender cases and eligibility criteria prone to error would better ensure that Commission resources are well spent. Also, implementing procedures that include periodic quality control evaluations of the eligibility determinations performed for a statistical sample of RCR cases processed would provide additional assurance that the determinations were made in accordance with Clemency Board Rules. Further, as part of the ongoing development of such a review process, results should be continually analyzed to identify those areas for which parole examiner training should be focused.

Recommendation: To provide assurance that only eligible ex-offenders are granted RCR, we recommend that the Commission establish a risk-based supervisory review process. Once established, the Commission should ensure that results of supervisory reviews are documented and analyzed. To provide additional assurances, the Commission should also consider implementing quality control procedures. We also recommend that the Commission further investigate the 13 RCR cases referenced in Table 3 of this report and refer the results of such investigation to the Clemency Board for further direction.

Finding No. 3: Overrides of Eligibility Determinations

The MAC database is a repository for all clemency applications, including RCR, submitted to the Commission. For RCR cases, a parole examiner is to perform case reviews and investigations, as appropriate, and update the MAC database as to the examiner’s name, the case number, the applicable RCR eligibility determination, and the date the review or investigation was completed. As previously noted, Commission procedures require that subsequent to the parole examiner’s determination of eligibility, a supervisor is to check the appropriate field within the MAC database to approve the parole examiner’s decision and to continue the case through the RCR process.

Our review showed that user roles for the MAC database generally supported assigned parole examiner and supervisor duties. However, we noted that MAC database programming did not preclude supervisors, prior to approving parole examiners’ decisions, from overriding the parole examiners’ RCR eligibility determinations within the MAC database. Also, while having the ability to override appears to be a necessary role for supervisors, the MAC database does not provide the parole examiner or management any notification of a supervisory change to an

eligibility determination, nor does it flag the change in the database for later review. Absent such automatic notifications or notations, overrides may not be subject to further scrutiny and errors that may be made in connection with the override may escape detection and correction. Additionally, the automated notation of supervisor overrides could provide important data for the development of the risk-based RCR supervisory review process discussed in Finding No. 2 and identify areas where additional staff training is needed.

Recommendation: We recommend that the Commission enhance the MAC database to ensure that parole examiners and management are automatically notified of supervisor changes to ex-offender RCR eligibility determinations. We also recommend the Commission periodically analyze supervisor overrides to determine vulnerabilities in the RCR process that require Commission action.

Finding No. 4: Performance Measures

Our analysis of the number of pending Eligibility Level 1, 2, and 3 cases as of February 1, 2009, disclosed that the Commission would require 71 employees working exclusively on RCR for a year to eliminate the accumulation of pending cases, as shown in Table 4.

**Analysis of Backlog of Cases
As of February 1, 2009**

RCR Eligibility Level	Number of Cases Pending ^(a)	Average Processing Hours Per RCR Case	Estimated Hours to Complete Processing	Number Hours Per Employee Per Year	Estimated Number of Employees Required
Level 1	19,047	0.80	15,238	1,854	8.22
Level 2	22,748	2.60	59,145	1,854	31.90
Level 3	2,841	20.00	56,820	1,854	30.65
Totals	44,636		131,203		70.77

Source: MAC database, Commission management, and *FPC Proviso Response to the Florida Legislature, dated October 1, 2008*

(a) The number of cases does not include 3,686 cases not yet entered into the MAC database (noted in finding No. 1) or 11,535 cases for which processing was nearly completed (e.g., awaiting final Board action).

As part of the Commissions’ performance measures reported in its Long-Range Program Plan, the Commission reported a performance standard for the total number of all clemency cases processed, as well as the total expenditures allocated for clemency cases in total. This measure did not provide information relative to the workload and cost for each type of case (i.e., Eligibility Levels 1, 2, and 3). Absent enhancement of Commission performance measures, decision makers may not be fully informed as to the Commission’s ability to timely process RCR requests and reduce the backlog of pending cases, particularly those requiring Eligibility Levels 2 and 3 processing. Such performance measures should address each RCR eligibility level and, for each level, performance standards, the number of cases processed, and information sufficient to calculate processing costs. The performance measures should also address the reduction of the existing backlog of pending cases.

Recommendation: We recommend that, pursuant to Section 216.1827(3)(a), Florida Statutes, the Commission submit a request to the Executive Office of the Governor to amend its performance measures to include measures for each RCR eligibility level and for backlog reduction.

Non-Capitalized Property

Finding No. 5: Accountability for Attractive or Sensitive Items

To provide accountability and data security, the Commission’s information technology staff maintained a listing of property items that did not meet the thresholds for capitalized property⁵ but which were considered attractive or sensitive. Some of these property items, such as computers, may store sensitive or nonpublic data. Table 5 provides a summary of the Commission’s list.

According to the Commission, a physical inventory of the attractive and sensitive items was performed for the fiscal year ended June 30, 2008. Such an inventory should be evidenced by a listing showing which items of property were located and which were not, as well as explanations describing the results of efforts made to locate any unaccounted for property. However, Commission staff stated that they did not maintain written documentation of the inventory.

Absent documentation substantiating that a physical inventory was properly performed, the Commission lacks assurance that this property and any data maintained thereon are being properly safeguarded. Additionally, without identification of items that were unaccounted for during the inventory, as well as the data that may have been stored on such items, the Commission is unable to properly demonstrate that it has appropriately investigated all instances of missing property, including any potential loss of sensitive or nonpublic data or other information.

**Table 5
Listing of Attractive and Sensitive Items That Do Not Meet Capitalization Thresholds**

Attractive and Sensitive Items	Number of Items
Monitors	175
Printers	102
Computers	55
Fax Machine	16
Scanners	11
Miscellaneous	5
Televisions	<u>3</u>
Totals	<u>367</u>

Source: Parole Commission.

Recommendation: To effectively safeguard the Commission’s attractive and sensitive items that do not meet the capitalization thresholds, as well as the data stored on these items, we recommend that the Commission document the inventory of such items as well as any efforts to locate any unaccounted for property.

PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that the Commission had taken corrective actions for the findings included in audit report No. 2008-011.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational 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.

⁵ Department of Financial Services Rule 69I-72.007, Florida Administrative Code, defines capitalized property as all tangible personal property with a cost of \$1,000 or more and having a projected useful life of one year or more.

This operational audit focused on the restoration of civil rights (RCR) at the Parole Commission (Commission). The overall objectives of the audit were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all applicable deficiencies disclosed in audit report No. 2008-011.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the period July 1, 2007, through February 28, 2009. In conducting our audit we:

- Obtained an understanding of internal controls related to RCR by interviewing Commission personnel, reviewing policies and procedures and other relevant documentation, and testing relevant records.
- Analyzed four months of data files for ex-offenders released from incarceration or community supervision by the Department of Corrections (Department) to determine whether the data was correctly uploaded from the Department's Offender Based Information System (OBIS) into the Management Application of Clemency (MAC) database.
- Tested 20 online and other paper requests from ex-offenders received by the Commission to determine whether each was correctly entered into the MAC database.
- Tested 203 ex-offender cases to determine whether the ex-offenders were correctly evaluated for RCR eligibility in accordance with Rules of Executive Clemency.
- Tested 100 ex-offenders cases that were approved for RCR by the Board of Executive Clemency to determine whether the cases were listed in the MAC database, were evaluated as eligible for RCR, and received supervisory approval.
- Tested two Clemency Board dockets to determine whether all ex-offenders listed were also listed in the MAC database.
- Reviewed reported performance measures to determine whether they were accurate and provided adequate information concerning clemency performance, including RCR.
- Tested access for 20 users of the MAC database to determine whether granted access was appropriate.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.

Our review did not include a review of the reliability of data provided by OBIS. The effectiveness of selected OBIS controls was the subject of Information Technology audit report No. 2009-011.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

In a response letter dated September 2, 2009, the Chair of the Florida Parole Commission concurred with our audit findings and recommendations. The Chair's response is included as Exhibit A.

**EXHIBIT A
MANAGEMENT'S RESPONSE**



FLORIDA PAROLE COMMISSION

**FREDERICK B. DUNPHY, CHAIRMAN
TENA PATE, VICE CHAIRMAN
MONICA DAVID, SECRETARY**

**CHARLIE CRIST, GOVERNOR
BILL McCOLLUM, ATTORNEY GENERAL
ALEX SINK, CHIEF FINANCIAL OFFICER
CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE**

September 2, 2009

Mr. David Martin
Auditor General
111 West Madison Street
Tallahassee, Florida 33299-1450

**Re: Florida Parole Commission: - Operational Audit Preliminary Findings
Restoration of Civil Rights' Clemency Process
Audit Period: beginning July 1, 2007 and ending February 28, 2009**

Dear Mr. Martin:

The Florida Parole Commission is in receipt of your July 9, 2009, report of preliminary and tentative findings and recommendations resulting from your audit of the Clemency Board's (Board) Restoration of Civil Rights' (RCR) process for the review period beginning July 1, 2007 and ending February 28, 2009.

The Commission serves as the investigatory and administrative arm of the Clemency Board. The review, eligibility determination, and processing of all clemency requests are strictly adhered to pursuant to Board direction and rule. The RCR review process currently followed by the Parole Commission was adopted by the Board on April 5, 2007. Further, the Parole Commission does not make decisions or recommendations regarding policy on any part of the clemency process.

Since the adoption of these rules, the Parole Commission's budget was reduced by 20% for FY 2008-09, with staff reductions being made primarily in the clemency area. The Commission's critical mission is public safety and administers programs with statutorily mandated timeframes, which must be met. When asked to prioritize its spending by the Legislature, the agency's funding resources were directed to programs where critical timeframes are mandated before funding clemency functions, which have no mandated timeframes. Thus, funding to the clemency function has suffered during the current economic downturn.

During the review period, other policy directives were made either administratively or by Executive Order that enhanced the RCR process for the stakeholders. Beginning October 31, 2007, clemency applicants receive a copy of their investigative report prior to a Board hearing and by Executive Order dated August 2008, the Commission now mails a voter registration form together with the certificate granting an individual their civil rights. Also, as a result of this order, the Commission added a search capability to its public website, allowing an individual or

EXHIBIT A
MANAGEMENT'S RESPONSE (CONTINUED)

their designee to check to see if their rights have been restored and, if granted, allows for the immediate printing of the certificate.

Although adopted in April of 2007, the actual implementation of the new RCR process occurred months later. This initial delay was due to: (1) the clemency database being reprogrammed to reflect the new rule changes; (2) 38,000 pending cases being re-reviewed for eligibility under the new rules; and (3) the Governor's RCR Initiative directive to locate ex-offenders potentially eligible for a Level 1 review under the new rules. This directive resulted in a six-month search and eligibility review effort, which produced hundreds of thousands of cases referred to as "historical" cases.

The Commission is responding to Finding No. 1 on behalf of Ms. Janet Keels, Executive Clemency Coordinator. The fifth and final finding and recommendation fell directly within my purview as Chairman of the Parole Commission, and I have taken the necessary corrective action to comply with your recommendation.

In closing, I have forwarded your audit of the Clemency Board's Restoration of Civil Rights' case review process to them for their review and consideration (Audit Findings 1 through 4). Through the years, the RCR process has been modified by various boards. However, the Parole Commission has remained consistent in its role of dutifully implementing and administering the clemency process. Again, the Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process.

I would like to thank your staff for their flexibility and spirit of cooperation as we explained the issues associated with administering the unique process of clemency.

Sincerely,


Frederick B. Dunphy
Chairman

Attachment

Cc: The Honorable Charlie Crist, Governor
The Honorable Bill McCollum, Attorney General
The Honorable Alex Sink, Chief Financial Officer
The Honorable Charlie Bronson, Commissioner of Agriculture
Chief Cabinet Aides
Clemency Aides

**EXHIBIT A
MANAGEMENT’S RESPONSE (CONTINUED)**

APPENDIX A

**FLORIDA PAROLE COMMISSION
RESPONSE TO TENTATIVE AND PRELIMINARY AUDIT FINDINGS
CLEMENCY/RESTORATION OF CIVIL RIGHTS AUDIT
FOR THE PERIOD BEGINNING JULY 1, 2007 AND ENDING FEBRUARY 28, 2009**

Finding No. 1: Ex-Offender Initiated Requests for RCR

***Finding No. 1:** Ex-offenders convicted of crimes in other states, in Federal courts, and who had not been placed in the custody of the Department of Corrections, must submit requests to initiate the RCR process. Although there is a procedure in place for the receipt of applications from these ex-offenders, 28,428 of the 32,859 (86.5 percent) requests received since January 2006 had not been referred to the Commission’s Office of Clemency Administration for review or investigation.*

***Recommendation:** We recommend that the Parole Commission, in conjunction with the Office of Executive Clemency, present for the Clemency Board’s consideration, rules establishing processing priorities for RCR requests.*

Commission’s Response:

The Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process. Policy decisions regarding the clemency process fall within the sole purview of the Clemency Board. However, the Parole Commission has remained consistent in its role of dutifully **implementing and administering the clemency process**. Historically, when a reviewing authority (OPPAGA, Auditor General) has made recommendations on the clemency process, the Commission has forwarded to the Clemency Board any findings and recommendations for their review and consideration. The system of processing RCR cases is subject to periodic changes as the Commission receives direction from the Executive Clemency Board regarding case processing priorities.

The lack of sufficient staffing and resources to support the increased caseload created by the newly adopted rules severely impacts the Commission’s ability to process cases as quickly as it would like. For the past 6 years, the Commission has informed the Legislature of the funding needs of the clemency process in its annual legislative budget request. Each year these requests have gone unfunded, while the caseload has increased significantly. For the previous fiscal year, the Commission absorbed a 20% budget reduction, which resulted in the loss of 24 staff positions, which has made the Commission unable to keep current with its workload demands or its clemency caseload. As staffing and funding become available, these problems will be rectified, and the Commission will take adequate measures to address this finding.

However, even with its current diminished resources, the Commission can report the following: Since the completion of the special “RCR OPS Project” June 30, 2009, and as of July 21, 2009, the number of ex-offender RCR initiated requests received during the reporting periods January 1, 2006 through February 1, 2009, and not yet referred to Clemency Administration for further processing, has been reduced from 28,428 (86.5 percent) to 21,118 (64.2 percent). Further, as

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of July 31, 2009, all 3,686 requests for the same reporting period were entered into the *Management of Application of Clemency* (MAC) database, in addition to all RCR requests received through June 30, 2009.

Finding No. 2: Eligibility Determination Procedures

Finding No. 2: *The Commission had not established for RCR eligibility determinations a risk-based supervisory review process or quality control procedures. A risk-based supervisory review process could target cases and eligibility criteria prone to error and assist in the more effective and judicious use of resources. Quality control procedures would also increase assurance that eligibility determinations were made in accordance with Clemency Board Rules.*

Recommendation: (a) *To provide assurance that only eligible ex-offenders are granted RCR, we recommend that the Commission establish a risk-based supervisory review process. Once established, the Commission should ensure that results of supervisory reviews are documented and analyzed. To provide additional assurances, the Commission should also consider implementing quality control procedures. (b)* *We also recommend that the Commission further investigate the 13 RCR cases referenced in Table 3 of this report and refer the results of such investigation to the Clemency Board for further direction.*

Commission's Response:

Part (a):

The Commission acknowledges the significance and importance of the Restoration of Civil Rights Process and that adequate quality control procedures should assure that the process is as error-free as possible. Having the responsibility of identifying and determining whether an individual is eligible to have his or her rights restored is a grave responsibility and one that should be carried out with the utmost professionalism and critical attention to detail. The Commission acknowledges that all errors committed during the RCR eligibility review are of concern and will strive for "zero" errors as the ultimate goal. To this end, the Commission's current supervisory review process provides certain quality control measures, which document a supervisor's analysis and oversight of an examiner's eligibility determination review of a case. However, improvement in the error rate for this process will always be a goal of the Commission.

Currently, the majority of the RCR workload is associated with ex-offender initiated RCR requests (Levels 1, 2, or 3). For these requests, RCR procedures require that the Examiner maintain a confidential file including any hardcopy documentation obtained through the investigative process which was used for determining eligibility. This confidential file is maintained by the Commission for five years and then archived and stored off-site at the State Records Center consistent with state records retention policy.

Supervisors review all of the ex-offender initiated RCR requests (Levels 1, 2, or 3) by viewing some of the State and Federal databases used by the Examiner during the eligibility determination. Once they complete the review, they provide written comments and/or corrections on the investigative report to the Examiner.

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When an eligibility determination investigation is received in Central Office, quality assurance reviews for ex-offender initiated RCR requests (Levels 1, 2, or 3) are conducted by two full-time employees in the Office of Clemency Administration. Additional quality assurance reviews are conducted by Parole Commissioners on all Level 3 RCR cases being presented to the Clemency Board for hearing. Further, all eligible RCR cases are given a review by the Board's Clemency Aides before making recommendations to their principals and prior to a final decision being made by the Board. If additional information is needed or corrections are to be made to the RCR case, the Supervisor and Examiner are notified by e-mail.

The Commission also processes all RCR EOS/TOS cases received from the Department of Corrections by electronic file. Current clemency procedures do not require the maintenance of a hardcopy file or documentation for these cases since the process migrated to a paperless system, which resulted in cost savings to the State of Florida. Another efficiency gained as a result of streamlining the process now allows Examiners to enter eligibility determination information directly into the MAC database, with Supervisors able to access the database from any location for review and approval of cases. Even though the procedures for the processing of EOS/TOS cases were simplified, quality assurance controls were kept in place which not only provide for a supervisory check but actually require the supervisor to submit the case as "approved" into the database. Also, the Mac database now automatically generates letters to ex-offenders determined ineligible for RCR Level 1 and specifies the reason(s) for such determination.

Through the collection and documentation of Examiner error data and the analysis of quality assurance reviews, the Commission has established a risk-based supervisory review process obtained by expertise gained from years of processing hundreds of thousands of RCR cases. When conducting supervisory reviews, Supervisors are trained to look for the most frequent, common errors made by Examiners. Regularly, administrators, supervisors, and examiners receive feedback on specific eligibility determination issues through e-mails, memoranda, monthly regional staff meetings, and statewide operational conference calls. For training purposes, they are also provided with all final Levels 2 and 3 RCR cases presented to the Clemency Board.

Again, the Commission's ultimate goal is to process as many RCR cases with no errors as possible. To this end, the Commission is committed to working with the Clemency Board to review its current RCR quality assurance procedures and to take any corrective measures which will further reduce the error rate and continue to ensure the integrity and quality of the RCR eligibility determination process.

Part (b):

The Commission will confer with the members of the Clemency Board and their respective Clemency Aides and seek their direction for further investigation on the above-referenced cases.

Finding No. 3: Overrides of Eligibility Determinations

Finding No. 3: *While having the ability to override a parole examiner's determination appears to be a necessary role for supervisors, the Management Application of Clemency (MAC) database*

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does not provide the parole examiner or management any notification of a supervisory change to an eligibility determination, nor does it flag the change in the database for later review.

Recommendation: *We recommend that the Commission enhance the MAC database to ensure that parole examiners and management are automatically notified of supervisor changes to ex-offender RCR eligibility determinations. We also recommend the Commission periodically analyze supervisor overrides to determine vulnerabilities in the RCR process that require Commission action.*

Commission's Response:

Only two Commission employees, the Director of Clemency Administration and the Executive Clemency Coordinator, are empowered to override an eligibility determination on a completed and approved RCR case. A Regional Administrator or a Parole Examiner Supervisor (hereinafter referred to as Supervisor) do not override a Parole Examiner's RCR eligibility determination in the MAC database.

The review of an Examiner's eligibility determination on all RCR cases is the responsibility of the Supervisor. If a Supervisor finds that an Examiner has incorrectly assessed an eligibility determination, the Supervisor and Examiner discuss the review and, if necessary, the Examiner makes the change to the eligibility determination in the MAC database. However, once a case is entered in the MAC database as having been "approved," a Supervisor cannot override the determination made by the Parole Examiner. To effectuate a change to a case determination that has been approved in the MAC database, the Supervisor must notify the Director or Coordinator by e-mail if an override to the database is necessary.

When an override of an eligibility determination is completed, the Director or Coordinator initiating the override notifies both the Supervisor and Examiner by e-mail. Pertinent information justifying this action is documented by the Director or Coordinator in the "Notes Section" of the MAC database.

Further, the Director or Coordinator analyze requests for overrides and routinely provide feedback to the Supervisor and Examiner by phone or e-mail to continually improve the RCR process.

In response to your recommendation, the Commission has formally requested a programming change to the MAC database for an automatic notification (flag) if an override to the database occurs on an eligibility determination. This programming change will be done on behalf of the Commission by the Department of Corrections' Information Technology Unit.

Finding No. 4: Performance Measures

Finding No. 4: The Commission's performance measures did not provide standards and results for each level of review or investigation and for backlog reduction.

Recommendation: *We recommend that, pursuant to Section 216.1827(3) (a), Florida Statutes, the Commission submit a request to the Executive Office of the Governor to amend its*

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performance measures to include measures for each RCR eligibility level and for backlog reduction.

Commission's Response:

The Parole Commission began providing an annual *Proviso Report* to the Legislature on its RCR related clemency function and relevant data October 2002. This report has been mandated each year thereafter in the Commission's approved budget allocation set forth in the General Appropriations Act and the accompanying proviso language. Initially, the report was requested to provide the Legislature and the Governor's Office of Policy and Budget (OPB) with a status report so they could be fully informed on the following information: the number of pending RCR cases, the number of RCR cases processed, the RCR process currently in use, and the cost for processing these cases.

The October 1, 2009, Proviso Report will contain a breakdown of this information by category for Levels 1, 2, and 3 RCR cases. The most recent report provided October 1, 2008, was a 37 page, comprehensive document providing detailed responses to the *exact* information being requested in proviso language by the Legislature. In fact, the data contained in Table 1 and Table 4 of the audit report utilized information taken from the Commission's most recent Proviso Report.

Since the rule changes were adopted April 2007, we have had no directive or request from the Legislature or OPB to modify the Commission's performance measures or we would have responded accordingly. The current proviso language directing the Commission to submit a report for its review on or before October 1, 2009, does not include a request that we amend our performance measures.

Again, the Parole Commission does not make decisions or recommendations regarding policy on *any part* of the clemency process. However, the Parole Commission has remained consistent in its role of dutifully implementing and administering the clemency process. To this end, the Commission has forwarded your recommendations to the Clemency Board for their consideration.

Finding No. 5: Non-Capitalized Property

Finding No. 5: Accountability for Attractive or Sensitive Items

Recommendation: *To effectively safeguard the Commission's attractive and sensitive items that do not meet the capitalization thresholds, as well as the data stored on these items, we recommend that the Commission document the inventory of such items as well as any efforts to locate any unaccounted for property.*

Commission's Response:

In response to your recommendation, the Commission has taken corrective measures, which include a recent inventory by the Department of Corrections (Department) of the Commission's attractive and sensitive items. Effective July 1, 2009, the Department began providing all of

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FPC's Information Technology services, which includes conducting future inventories of the Commission's attractive and sensitive information technology equipment and resources.